IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. ...77-600

LANSING BOARD OF EDUCATION, a Body Corporate; and Members of the LANSING BOARD OF EDUCATION; viz., VERNON D. EBERSOLE, CLARE D. HARRINGTON, MICHAEL F. WALSH, RAY A. HANNULA, JOAN HESS, J. C. WILLIAMS, BRUCE ANGELL, JOSEPH E. HOBRLA and MAX D. SHUNK,
Petitioners,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Lansing Branch; CYNTHIA TAYLOR, JUDITH TAYLOR and ANDREA TAYLOR, by Their Father and Next Friend, JAMES R. TAYLOR; MELINDA LEA HEDLEY, CHRISTINE MICHELE HEDLEY, DOUGLAS JOHN HEDLEY and DANIEL JOSEPH HEDLEY, by Their Mother and Next Friend, JOAN L. HEDLEY; PETER MILLER and ELIZABETH MILLER, by Their Father and Next Friend, CHARLES MILLER; FRANK J. PENNONI and JAMES PENNONI, by Their Mother and Next Friend, KATHLEEN PENNONI; and DAVID KRON and LISA KRON, by Their Father and Next Friend, WALTER V. KRON,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit

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To the United States Court of Appeals for the Sixth Circuit

Petitioners Lansing Board of Education, a municipal body corporate, and members of the Lansing Board of Education,

namely Vernon D. Ebersole, Clare D. Harrington, Michael F. Walsh, Ray A. Hannula, Joan Hess, J. C. Williams, Bruce Angell, Joseph E. Hobrla and Max D. Shunk, pray that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on July 26, 1977.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals, 485 F2d 569 (July 26, 1977), appears in the Appendix, pp. 161-184. Other opinions delivered in the Courts below are:

United States District Court for the Western District of Michigan, Southern Division

August 10, 1973, Restraining Implementation of Resolution of Defendant Lansing Board of Education Rescinding Cluster Plan of Busing Children Among Eight Schools and Enlarging Busing Plan to Include Thirteen Elementary Schools, not reported. (1-40)

December 19, 1975, Judgment that Defendant Lansing Board of Education Operated a Dual School System in Lansing School District and Mandatory Injunction Requiring Continued Operation of Busing Plan Affecting Thirteen Elementary Schools in Lansing School District, not reported. (A. 44-140)

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on July 26, 1977. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 USC 1254.

QUESTIONS PRESENTED

I

Did the Defendant Board Have an Affirmative Duty to Act to Preclude Elementary Schools From Becoming Segregated and to Integrate Racially Identifiable Schools?

II

Did the Court of Appeals Err in Affirming the District Court's Employment of "the Natural and Foreseeable Consequences" Test to Establish Both That an Action of the Defendant Board Was Discriminatory and That It Was Racially Motivated?

III

Did the Court of Appeals Err When It Found the Defendant Board Was Guilty of Certain Discriminatory Actions and Omissions But Failed to Determine Whether the Discriminatory Actions and Omissions Resulted in the Condition of Segregation at Any Elementary School in Lansing School District at the Time of Trial?

IV

Did the Court of Appeals Err in Affirming the Remedy Imposed on the Defendant Board Where the District Judge Had Not Made the Required Incremental Effects Test?

V

Is the Relationship Between the Segregative Acts Attributed to the Defendant by the Court of Appeals and Present Segregation "So Attenuated as to Be Incapable of Supporting a Finding of De Jure Segregation Warranting Judicial Intervention"?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution:

Amendments. Article XIV, Section 1—"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Introduction

The Lansing School District was first organized in 1847. For many years the boundaries of the City of Lansing, capital of the State of Michigan, and Lansing School District were coterminous or nearly so. The area now embraced within the School District is approximately 50 square miles, a substantially larger area than that of the City. The greatest expansion in the history of Lansing School District occurred between 1958-1965 when all or portions of twelve neighboring school districts annexed to the Lansing School District.

The Grand River meanders through Lansing, Michigan, forming a large U as it flows from west to east, south to north, and east to west. The eastern portion of the large U bears the geographic misnomer of "River Island Area." Within the River Island Area there are eight elementary school service areas.

They are: Main Street, Lincoln, Kalamazoo Street, Michigan, Verlinden, Willow, Genesee and Walnut. At the present time there are elementary school buildings in each service area except Lincoln and Kalamazoo Street. In addition, the new Vivian Riddle School which was opened in September, 1976, lies within the River Island Area and would serve elementary students who reside in Lincoln, Kalamazoo and Michigan Avenue service areas if it were operated as a neighborhood school.

In 1950, the population of Lansing, Michigan, was overwhelmingly white. There were 2979 black people out of a total population of 92,129. In 1960, there were 6745 blacks out of 107,807. (61-62)

The black population of Lansing in 1950 was concentrated in the southerly part of the River Island Area. 8.2 percent of the people there were black and 91.8 percent of the people were white. (402)

In 1960, the black population in the River Island Area was 20.1 percent of the population there and 79.9 percent was white. (402) In 1970, blacks constituted 33.2 percent of the population and whites constituted 66.8 percent of the River Island Area population. (402)

As black people moved into previously white neighborhoods in the River Island Area ". . . the racial composition of elementary schools changed accordingly." (62)

In 1950 Lincoln School was 99% black.

In 1956 Main Street School was 62% black.

By 1964 Kalamazoo Street School was 81% black and Michigan Avenue School was 74% black.

The Lansing Board of Education followed a system of establishing a neighborhood concept of attendance areas. (302) School children were never separated on the basis of race in

the schools in Lansing School District. The positive law of Michigan has prohibited dual school systems since at least 1869.

Plaintiffs commenced this class action by filing a Complaint on October 17, 1972, in the United States District Court for the Western District of Michigan, Southern Division. Plaintiffs sought to enjoin the holding of a recall election of certain members of the Lansing Board of Education and to restrain the Lansing Board of Education from rescinding a certain elementary school pupil desegregation plan designed to achieve a better racial balance in certain elementary schools in Lansing School District.

On October 20, 1972, plaintiffs amended their Complaint for the sole purpose of making changes as to the parties defendant.

Plaintiff's motion for preliminary injunction to restrain the holding of the recall election was not granted.

On February 27, 1973, plaintiffs filed a "Supplemental Complaint for Declaratory and Injunctive Relief" to allege that the recall election had taken place, to drop Board members who had been recalled and to add as party defendants the new Board members. Plaintiffs averred that the Lansing Board had on February 1, 1973, rescinded portions of its "Equal Educational Opportunity Policy Resolution," rescinded the elementary school desegregation plan which had been adopted on June 29, 1972, claimed that the purpose and effect of the rescinding resolution was the resegregating of the Lansing school system and the denial of plaintiffs of the "equal protection of the laws of the United States and equal educational opportunities guaranteed by the 13th and 14th Amendments to the Constitution of the United States." Plaintiffs prayed for both a temporary and permanent injunction to preclude defendants

from giving effect to the rescinding resolution and to reinstate the elementary school plan of June 29, 1972.

This lawsuit involves 6 of the 48 elementary schools in Lansing School District relative to the charge of illegal segregation. Seven other schools are involved because they are in the Cluster Plan.

Hearing on plaintiffs' motion for preliminary injunction took place July 17 and 18, 1973.

On August 10, 1973, the District Judge entered an injunctive order that restrained defendants from giving any effect to the resolutions adopted by the defendant Board on February 1, 1973, which revised the policy statement on equal educational opportunity and rescinded the so-called desegregation plan of June 29, 1972. In addition, the District Judge ordered that:

> "The June 29, 1972, Lansing Board of Education plan be reinstated and that its provisions be implemented at the appropriate times." (39-40)

Defendants' motion for stay was denied on August 10, 1973. Defendants' application for stay in the United States Court of Appeals for the Sixth Circuit was denied on August 29, 1973.

Trial on the merits of the litigation commenced October 15, 1975. The case was submitted on November 20, 1975. On December 19, 1975, the District Judge filed his opinion and judgment. Judge Fox "ordered, adjudged and decreed" that the resolution adopted by the defendant Lansing Board of Education February 1, 1973, which revised "the policy statement on equal educational opportunity" and rescinded "the desegregation plan of June 29, 1972," was "unconstitutional, void and of no effect." The defendants were enjoined and restrained from enforcing the resolutions adopted February 1, 1973, and

the remedy ordered August 10, 1973, involving the busing of school children in 13 elementary schools in Lansing School District was continued until the further order of the Court. (159-160)

On January 14, 1976, defendants filed notice of appeal.

On July 26, 1977, the United States Court of Appeals for the Sixth Circuit affirmed.

At the trial the District Judge considered certain actions and omissions of the defendant Board and found constitutional violations on the basis of the "foreseeable effects test."

(1) **Attendance Zone Boundaries.**

Only two boundry matters, both of which occurred in 1957, were considered.

Prior to March 28, 1957, the defendant Board rejected the request of white people in Main Street School service area to detach this area and reattach it to Verlinden which was a white school. On March 28, 1957, the defendant Board resolved it could not change boundary lines as requested by blacks to reduce "the Negro to white ratio" at Main ". . . unless some children travel unreasonably long distances, in some cases completely across a school district and into the district of a distant school." (328-330)

In the same resolution the defendant Board rejected the request of whites to permit parents to transfer any child in Main Street School to another Lansing school because this "would result in Main Street School soon having an all Negro enrollment." And the Board also rejected the request of white people for the construction of an elementary school in the Heatherwood Area which was a white area in the Main Street School attendance zone.

The second boundry line matter related to a resolution adopted July 8, 1957. The boundary line change was made to relieve overcrowding at Kalamazoo. An area where 12 white students resided was detached from Michigan and added to Verlinden. An area where 58 elementary school children lived was detached from Kalamazoo and added to Michigan. (342-343)

The area detached from Kalamazoo and reattached to Michigan was in Census Tract 15 which was even in 1960 still 59% white. The bulk of Michigan attendance area was in Census Tract 15. (400; 401) Kalamazoo Street School was in 1950 90% white and 10% black. (214-215)

On the basis of the foregoing facts the District Judge said:

> "Attendance zone alterations which have the effect of exacerbating racial imbalance and isolation have been found in numerous cases to be indicia of segregative intent." (66-67)

The Court of Appeals concurred. (172)

Neither Court made any finding as to the effect of the defendant Board's refusal to change boundary lines at Main and its changing boundary lines at Verlinden, Michigan and Kalamazoo on the condition of segregation at Michigan at the time of trial. Kalamazoo had been closed in 1970 and Verlinden was naturally integrated.

(2) **Transfers.**

The District Judge considered the matter of transfers requested on the basis of emotional problems and supported by a physician's certificate.

There was testimony as to a belief that these transfers were abused. There was no evidence that any medical certificate

supporting a transfer requested on the basis of emotional problems was not valid. (188-189)

It is noted that the resolution of March 28, 1957, provided for the construction of "a special room for emotionally disturbed children." (330)

The District Judge found that medical transfers enabled whites to escape from black Main and Michigan to "White Verlinden."

There is no evidence that any child was transferred because of emotional need after 1970. In 1970 and 1971 there were only 4 white non-resident pupils at Verlinden and 3 in 1972. There is no evidence of any non-resident pupils at Verlinden after 1972.

The District Court made no determination as to the effect on the condition of segregation at Michigan, Main and Verlinden at the time of trial.

(3) **Mobile Units at Main Street School.**

Two mobile units were used at Main Street School to relieve overcrowding for four school years ending in 1965. Mobile units were used at white schools at the same time and even to the time of trial to relieve overcrowding.

(4) **Physical Conditions and Facilities.**

The District Judge found that Michigan Avenue School was an inferior facility.

Michigan Avenue did deteriorate because the Board intended to close it as an elementary school. Michigan Avenue School had a deficient heating system as did 12 white elementary schools.

The 1965 Citizens' Advisory Committee which included blacks some of whom were members of the NAACP recommended that Michigan Avenue School "building be phased out as a K-6 [elementary] facility with no major expenditures made on the physical plant."

The defendant Board's resolution that implemented this recommendation was introduced by Mrs. Hortense Canady, a prominent NAACP member who also served on the defendant Board. (230)

Michigan Avenue School was renovated in 1972 after the Board, because of conditions beyond its control, was unable to close it as an elementary school. The State of Michigan finally purchased the building.

(5) **Faculty Hiring and Assignments.**

The District Judge found that at the time of trial there was no discrimination in the hiring practices of the District. However, he found that the disproportionate assignment of minority teachers to minority schools "has had the effect of increasing and perpetuating the racial identifiability of the schools in question, and that this effect was a natural and foreseeable consequence of the policy."

Ony 3 schools were cited. And one of them, Lincoln, was closed in 1965.

33% of the teachers at Main were black and 80% of the students were black.

46% of the teachers at Michigan were black and 81% of the students were black. The staff at Michigan was a "super staff." The present Director of Elementary Education in the School District, a black woman, was once a teacher at Michigan. (202)

The principals select the teachers for their building. There was no assignment of teachers on the basis of race. The best

qualified person for the job was hired. (201; 205; 208; 211; 322-323) The evidence demonstrated that defendants' counsel erroneously stipulated that the Board followed a policy of assigning minority teachers to minority schools. The only policy was to allow the principals to select the teachers.

(6) **The Cluster Plan.**

A Citizens' Advisory Committee in April, 1972, recommended to the defendant Board the adoption of a plan to desegregate some of Lansing's elementary schools and suggested several plans. The Committee noted that citizens communicated to it saying "we believe in integration, but we don't want busing." (373)

Recall petitions were circulated against Board members who favored busing to desegregate the elementary schools. (192)

A suit was filed on June 15, 1972, in the Ingham County Circuit Court to enjoin the defendant Board from adopting a desegregation plan; the Ingham County Circuit Court issued a temporary restraining order which prevented the Board from voting on a desegregation plan. Judge Fox granted the defendant Board's petition to remove the suit from the Michigan Court to Federal Court. On June 26, 1972, Judge Fox set the temporary restraining order aside and on June 29, 1972, the defendant Board adopted the Cluster Plan which involved 8 schools initially and 13 schools starting in September, 1973. The plan involved grades 3 through 6. The Cluster Plan required busing of children from out of the neighborhood schools to other schools. (95-97) The plan sought to establish a racial balance in each school, so that there would be not less than 10% minority nor more than 45% minority in each school. (197) Black students and white students were principally involved in the first year's operation of the Cluster Plan.

The second year brought Spanish surnamed children into the program.

Sufficient petitions for a recall election were filed before the Cluster Plan was implemented in September, 1972, but an election could not be scheduled until November, 1972. (101)

The five Board members who voted for the Cluster Plan resolution were recalled.

Five new members were elected to replace the recalled members.

A majority of the newly constituted Board voted on February 1, 1973, to rescind the Cluster Plan resolution and reinstate the neighborhood school policy.

In 1973, the defendant Board undertook a survey that showed that 41% of the black people opposed busing their children away from their neighborhood school.

In 1975 the Board reviewed the educational results of the Cluster Plan resolution. The review disclosed that busing of children accomplished nothing academically based on reading and math test scores. Another survey revealed that attitudinally busing accomplished nothing.

The District Judge on August 10, 1973, nullified the vote of the defendant Board to rescind the Cluster Plan and ordered continuance of the Cluster Plan. (39-40)

(7) **One-Way Busing.**

One-way busing of black students from a neighborhood school was first suggested by the NAACP and the Main Street P-TA. One-way busing was an alternate method to the use of mobile units to relieve overcrowding. One-way busing commenced in 1964. (175; 222)

Lincoln and Kalamazoo Street Schools were closed and the students from their attendance zones were bused to other elementary schools. The 1965 Citizens' Committee on Educational Opportunity approved the closing of Lincoln and recommended the closing of Kalamazoo. This Committee had a

number of black members including several prominent members of the NAACP. (224-228)

Mrs. Hortense Canady, a member of the defendant Board and a prominent member of the NAACP, introduced the resolution to close Kalamazoo. (229-230; 308)

The black community favored the closing of Lincoln and Kalamazoo Street schools. (190-192; 307)

(8) **Site Selection.**

The District Judge found that selection of the site for construction of Vivian Riddle School 'proves segregative intent beyond question." (182)

Selection of the site for Vivian Riddle School was made in conjunction with a City-sponsored program known as "Kingsley Place Development," which was funded by the Federal Government. "Kingsley Place Development" involves the erection of a community building and the development of a park. Black citizens participated in the initiation and development of this project and they desired to have a school in the same area. (296-298)

A 1973 survey of the people whose childlren would be able to attend Vivian Riddle School if it were operated as a neighborhood school showed that 49% of the black people and 67% of the white people wanted it operated as a neighborhood school. 16% of the black people wanted it operated as a school open to everyone and 29% of the black people wanted it operated as a neighborhood school. (260; 274)

BASIS FOR DISTRICT COURT JURISDICTION

Jurisdiction of the District Court was invoked under 28 USCA 1331(a); 1343(3) and (4); under 42 USCA 1983, 1988 and 2000(d); and under 28 USCA Sections 2201 and 2202.

REASONS WRIT SHOULD BE GRANTED

I

The Court of Appeals for the Sixth Circuit Erred in Holding That the Defendant Board Had an Affirmative Duty to Act to Preclude Elementary Schools From Becoming Segregated and to Integrate Racially Identifiable Schools.

The District Judge repeatedly faulted the defendant Board because it did not act to prevent a school from becoming segregated and because it did not integrate racially identifiable schools. The District Judge erred in so holding and the Court of Appeals erred in affirming.

This Court held in *Swann v. Board of Education*, 402 US 1 at Pg. 28 (1967):

> "Absent a constitutional violation there would be no basis for judicially ordering the assignment of students on a racial basis."

The Court of Appeals for the Sixth Circuit held in the case of *Deal v. Cincinnati Board of Education*, 369 F2d 55 (1966):

> "We hold that there is no constitutional duty on the part of the Board to bus Negro or white children out of their neighborhoods or to transfer classes for the sole purpose of alleviating racial imbalance that it did not cause, nor is there a like duty to select new school sites solely to further such a purpose."

The District Judge and the Court of Appeals ignored these decisions.

Chronologically the first unconstitutional segregative act finally attributed to the defendant Board by the District Judge is based upon the fact that the Board did not make a bound-

ary change in 1957. (63) In 1957 white parents requested that part of the attendance area of Main Street School be detached and reattached to Verlinden Street School. (64) Black parents requested that the Board "change boundaries to reduce concentration of Black students at Main." Neither request was granted. The defendant Board was under no constitutional duty to grant either request. The Board was not responsible for the fact that the number of black students was increasing at Main Street School. The trial judge recognized the truth of this proposition when he said, "Blacks continued to move into the Main Street School service area, and the number of Blacks in the school continued to increase." (62)

The District Judge stated as to the matter of integration and annexations:

> ". . . between 1949 and 1965 there were 18 separate annexations of neighboring school districts by the Lansing School District. Def. Ex. 79A, B. . . . Each of these annexations presented the Board with an affirmative opportunity to re-examine the attendance zone boundaries of the district, and to work toward racial integration. Instead, in each instance, the Board chose neither to reorganize service areas nor to initiate any other action which would have minimized discriminatory racial isolation." (67-68)

The District Judge made no finding of "discriminatory racial isolation" that occurred prior to 1957. Without regard to whether the trial judge ever determined that the defendant Board was responsible for "discriminatory racial isolation" subsequent to 1957, he made no such determination as to anything that took place before 1957. Obviously it is the view of the District Judge that a board of education is legally obligated "to work toward racial intergration" even in the absence of constitutional violations that produced segregated schools.

The Court of Appeals also shares the same point of view for it declared: (171)

> "Boundary changes between Main, Michigan and Verlinden could have decreased the racial identifiability of these schools." (171)

The Court of Appeals did not find any constitutional violation that compelled such changes.

The District Judge also stated that when the number of students attending Kalamazoo and Lincoln Schools decreased, the resulting classroom vacancies presented the Board with an opportunity to bring white students in and integrate those schools. (81) The District Judge did not find any constitutional violation by the defendant Board that required the Board to integrate Lincoln and Kalamazoo.

The District Judge and the Court of Appeals simply disregard *Swann* and *Deal*, supra. As a result they erred in holding that the defendant Board was under a duty to make a boundary change at Main in 1957 and that its failure to make such a boundary change was unlawful.

II

The Court of Appeals Erred in Affirming the District Court's Employment of the "Natural and Foreseeable Consequences" Test to Establish Both That an Action of the Defendant Board Was Discriminatory and That It Was Racially Motivated.

The District Judge reviewed certain actions of the defendant Board, such as boundary line changes, use of mobile units, implementation of a medical transfer policy, assignment of teachers to schools, one-way busing, rescission of the Cluster Plan and construction of Vivian Riddle School. He then applied the "natural and foreseeable consequences" test to find that these actions were discriminatory because they exacerbated or aggravated a condition of segregation at Main, Michi-

gan Avenue and Verlinden Schools. He then inferred that because the action exacerbated or aggravated a segregative condition at a school that the action was racially motivated.

The Court of Appeals affirmed the District Judge's employment of the "natural and foreseeable consequences" test to establish both discriminatory result and racially motivated purpose.

The Court of Appeals asserted in its opinion that "Judge Fox explicitly adopted a test dependent on purposeful segregation by public school officials." (165) However, the opinion of the Court of Appeals does not reveal any test employed by Judge Fox other than the "natural and foreseeable consequences" test. Judge Fox stated:

> "In order to fairly assess the alleged actions and inactions of the defendants, and to determine what the foreseeable consequences of these acts and omissions were, it is necessary to consider the conditions existing when they occurred." (58)

It is readily apparent that an action might have a discriminatory effect but not be racially motivated. In the case at bar, children were transported from the attendance zone of their neighborhood school to a distanct school. This action was incontrovertibly discriminatory. These children were not allowed to attend their neighborhood school. However, the action was not racially motivated. The Court of Appeals stated:

> "In 1964, parental pressure forced the Board to transport students to Walnut School to relieve overcrowding at Main." (175)

In yielding to parental pressure the Board obviously was not racially motivated. But it was certainly discriminatory. Nonetheless, the Court of Appeals said:

> "We therefore affirm the District Court's finding that the one-way busing of black children, beginning in 1965 and continuing to the present without a corresponding effort to spread the burden of integration more equitably through the system, is an act of *de jure* segregation." (177)

(Actually one-way busing began in 1964).

It is also evident that an action of a Board of Education might be racially motivated but not have a discriminatory effect. An example might be a refusal of a Board of Education to establish a drivers education program at a racially segregated school, because the Board members were of the opinion that black students were not qualified to have such a program simply because they were black students. The action of the Board in refusing to have a drivers education program would be clearly racially motivated on the hypothetical set of facts. However, it would not be discriminatory if there were no drivers education program at any of the schools in the school system.

Logically there is no basis for holding that the foreseeable consequences test can be a basis for finding both discriminatory action and racially motivated purpose. It would seem that this Court has rejected the efforts of some Circuits "to read the 'natural and foreseeable consequences' test into the *Keyes* requirement of segregative intent." (Footnote 6 on p. 389 of the *U.S. v. Texas Education Agency*, 532 F2d 380 (1976)). Judge Wisdom wrote in *U.S. v. Texas Education Agency:*

> "As articulated in Austin I, the case before us presents not only the use of a neighborhood assignment policy in a residentially segregated school district, but also the taking of actions dating back to the early 20th Century that the natural, foreseeable and avoidable result of creating and maintaining an ethnically segregated school system.

This Court remanded *U.S. v. Texas Education Agency* for reconsideration in light of *Washington, Mayor of Washington, D.C., et al. v. Davis, et al.*, 426 US 229 (1976).

In *Washington, Mayor of Washington, D.C., et al. v. Davis, et al., supra,* this Court said:

> "The school desegregation cases have also adhered to the basic equal protection principle that the invidious quality of the law claimed to be racially discriminatory must ultimately be traced to a facially discriminatory purpose."

In *Dayton Board of Education, et al. Petitioner v. Mark Brinkman, et al.,* 97 S Crt Rep 2766 (1977) this Court held:

> "The duty of both the District Court and of the Court of Appeals, in a case such as this, where mandatory segregation by law of the races in the schools has long since ceased, is to first determine whether there was any action in the conduct of the business of the school board which was intended to, and did in fact, discriminate against minority pupils, teachers or staff."

This Court has surely rejected the "natural and foreseeable consequences" test to establish "racially discriminatory purpose."

In the case at bar the District Court and the Court of Appeals employed the "natural and foreseeable consequences" test to establish both discriminatory effect and racially motivated purpose. Neither the District Court nor the Court of Appeals applied the test set forth in *Washington v. Davis* at page 242 that "an invidiously discriminatory purpose may often be inferred from the totality of relevant facts."

Review of the findings of the District Court and the Court of Appeals as to actions of the defendant Board demonstrate that the District Court and the Court of Appeals repeatedly employed only the "natural and foreseeable consequences" test and did not draw inferences "from the totality of relevant facts."

Boundary Lines:

The Court of Appeals said:

> "The District Court found that in the late 1950's the Board of Education deliberately froze attendance zone boundaries to contain black students within predominately black schools, while altering the attendance zone boundaries between the white Verlinden service area and the black Michigan and Kalamazoo service areas in a manner which 'had the foreseeable effect of increasing the racial identifiability of Michigan Avenue School.'" (171)

The District Judge stated:

> "Attendance zone alterations which have the effect of exacerbating racial imbalance and isolation have been found in numerous cases to be indicia of segregative intent." (66-67)

The record actually discloses that the Trial Court and the Court of Appeals, in fact, considered only two boundary matters. The sweeping conclusionary generalizations are not supported by the record and the Court erred in applying the foreseeable effects test.

A. Boundary line at Main.

On March 28, 1957, the defendant Board adopted a resolution that among other things set forth that the defendant Board could not adopt a recommendation that it "adjust further the school boundaries to reduce the Negro to White ratio" because no "material results" could be accomplished "unless some children travelled unreasonably long distances, in some cases completely across a school district and into the district of a distant school." (329) The defendant Board recognized that Main Street School at that time was a predominantly black school and could develop into a completely segregated school, a "situation not conducive to satisfactory race relations." However, as the District Court said:

"Blacks continued to move into the Main Street School service area, and the number of blacks in the school continued to increase." (62)

The defendant Board has shown hereinbefore that under decisions of this Court and the Court of Appeals, the defendant Board was not under any constitutional obligation to change boundary lines to relieve racial imbalance.

The District Judge, nonetheless, some eighteen (18) years later challenged the statement that boundary lines could not be changed without causing some children to travel unreasonably long distances. The District Judge did not specify a boundary line that could have been adopted by the Board of Education in 1957 that would have changed the black-white ratio at Main. Stating that at least ⅓ of the attendance zone of Verlinden School was within a mile of Main Street School, he implied that if the Main Street boundary line had been extended north into what was then the Verlinden attendance zone, white children would then have been required to attend Main Street. Aside from the fact that there was no evidence to show that extending the boundary line north into the Verlinden zone would have resulted in enough white children being brought into Main Street School to affect the black-white ratio to an appreciable degree, there is the obvious question of denial of equal protection of the law to the white children. The theoretical boundary line change implicit in the Trial Judge's finding would be made on a racial basis, that is, to cause white children to change from the neighborhood school they attended to a distant school for the purpose of achieving a better racial balance at the distant school. In addition, bringing white children into Main Street School by changing the boundary line in such a fashion would add to the problem of overcrowding that already existed at Main Street. Then to relieve overcrowding at Main Street, black children would have to leave their neighborhood school and cross their neighborhood school attendance zone, cross a part

of the Michigan Avenue attendance zone and go into Verlinden zone. The children who would have had to walk unreasonably long distances were black children. In 1957, the black children lived south of Main Street. The white children who attended Main Street School lived north of Main Street. (239)

The District Judge by implication condemns the action of the defendant Board and seemingly finds it in violation of the Constitution. The District Judge applied no other test than the foreseeable effects test. He did not apply the "totality of relevant facts" test. The resolution of the defendant Board, plus it prior actions, absolutely refute any racially motivated purpose in its adopting the resolution.

The District Judge noted that in 1956 the Board attempted to change the ratio of blacks and whites by establishing within the attendance area of Main an optional zone from which students living there could go to Lincoln or Kalamazoo. The District Judge also noted that the Board had denied the request of whites to detach the area where they resided from Main Street School and attach it to Verlinden. (64) The District Judge while noting that the resolution of the Board rejected the request that a new elementary school be constructed, did not note that this request was made by white parents. The fifth recommendation was that the Board "immediately construct an elementary school in the Heatherwood Area." The Heatherwood Area was a white area at that time. (239).

The District Judge did not mention that the Board also rejected another request that was made by whites. The white parents requested that parents be permitted "to transfer any child in Main Street School to another Lansing school." The defendant Board rejected this request because granting it "would result in Main Street School soon having an all Negro enrollment."

The action of the defendant Board in rejecting a request made by black parents for boundary line change was not racially motivated. The defendant Board rejected the request of whites that the area in which they lived be detached from Main and attached to Verlinden. The defendant Board rejected the request of whites that parents be permitted to transfer their children from Main Street School to another Lansing school and the Board rejected the request of whites that a new elementary school be constructed in the white area. The District Judge also ignored the fact that it would be black children who would be required to walk unreasonably long distances. While it was foreseeable that the number of black students would increase at Main the conclusion of the Board that it could not prevent this development by a boundary change was not racially motivated.

B. **Boundary lines at Michigan, Verlinden and Kalamazoo.**

The District Judge considered a boundary line change that involved Michigan, Verlinden and Kalamazoo Schools. The District Judge said the Board altered the boundary lines in September, 1957. Actually, the resolution was adopted July 8, 1957. (331) At the trial it was stipulated that if Lansing School District's Information Services Director John Marrs had been sowrn to testify he would have testified that this boundary line resolution was adopted to relieve overcrowding at Kalamazoo Street School. (65) The District Judge discounts this reason, ignoring the undisputed and undisputable facts in the record, and by employment of the foreseeable consequences test came to the conclusion that the action of the Board had the "effect of exacerbating racial imbalance and isolation" and was evidence of "indicia of segregative intent." (66-67) The Court of Appeals went even further than Judge Fox did. On Page 11 of its opinion, the Court of Appeals said "the boundary changes took an all white area from Michigan,

which was becoming increasingly black, and transferred it to Verlinden, which was white, and at the same time a black area was transferred from the Kalamazoo service area to Michigan." (171)

The District Judge and the Court of Appeals both ignored the fact that the boundary line changes in question did relieve overcrowding at Kalamazoo. The following facts demonstrate that detaching the area from Kalamazoo and attaching it to Michigan Avenue relieved overcrowding at Kalamazoo. The capacity at Kalamazoo was 568 students.

School	Enrollment in 1956-57	Enrollment in 1957-58	Increase
Verlinden	307	319	12 (343)
Michigan	238	296	58 (342)
Kalamazoo	551	557	6 (342)

The boundary line change resulted in an increase of 58 students at Michigan Avenue. If these 58 students had not been taken from Kalamazoo, Kalamazoo Street School would have had an enrollment in excess of its capacity.

The area that was detached from Kalamazoo, contrary to the finding of the District Court and the Court of Appeals, was in fact a white area and Kalamazoo Street School was, in fact, a white school in 1957. The two court rule should not preclude petitioners from showing that the findings of the District Court and the Court of Appeals are contrary to the official U.S. Census records and, in fact, are not supported by the testimony of any witness. The area in question is described as:

> "The Michigan Avenue School area shall include the area from Logan Street West to Jenison Avenue between Kalamazoo Street and Washtenaw Street. A corresponding

change shall be made in the Kalamazoo Street School area." (331)

The described area is located in Census Tract 15. (400) Even in 1960, U.S. Census Tract 15 was 59% white. (402) No one testified that this area was black in 1957. And the U.S. Census records show that even in 1960 Census Tract 15 was 59% white.

A witness who attended Kalamazoo Street School in 1957, testified the student population was 90% white and 10% black at that time. (214-215)

The findings of the District Court and the Court of Appeals relative to boundary matters are completely erroneous because the inference of racial motivation resting solely upon the foreseeable effects test is contrary to the undisputed evidence that shows racial motivation played no part in the decision of the defendant Board.

C. **Transfers.**

The District Judge stated:

"The Board's intentional maintenance of the [medical] transfer policy, and its refusal to change it, had the clearly foreseeable effect of increasing racial identifiability of Main Street School, Michigan Avenue School and Verlinden Street School." (76)

The Court of Appeals stated:

"The Court concluded that the 'Board's intentional maintenance of the transfer policy and its refusal to change it, had the clearly foreseeable effect of increasing racial identifiability of Main Street School, Michigan Avenue School and Verlinden Street School.' We affirm the inference

of segregative intent drawn by the district court from continuation of the special transfer policy." (174)

The medical transfer policy referred to permitted the transfer of a student from the school servicing the attendance zone in which the child lived to another school on the basis of emotional need supported by a certificate of a physician. Both black children and white children were transferred on the basis of emotional need. (186)

There is no evidence that the Board of Education was racially motivated in adopting the policy. There is no evidence that the Board of Education was racially motivated in the implementation of the policy.

There is no evidence that the Board of Education was racially motivated in continuing the policy, although Citizens Committees did indicate that if the policy were abused it would contribute to the segregative condition of schools. A school administrator did testify that in his opinion the medical transfer policy was being abused. However, neither the Court of Appeals nor the District Court considered the totality of relevant facts, in drawing an inference from foreseeable effects of increasing racial identifiability of Main, Verlinden and Michigan.

In 1957 the Board of Education provided for "a special room for emotionally disturbed children" at Main Street School. (330) And of the utmost significance, but completely ignored by the District Court and the Court of Appeals, is the fact that the Chairman of the Sub-Committee of the 1961 Citizens Committee, who objected to the medical transfer policy because it did not require a psychiatrist's certificate, acknowledged that the Sub-Committee had no evidence that a medical certificate issued in connection with the application for a child to transfer for emotional reasons was not valid. (188) There was, in fact, no evidence that any medical certificate that was issued

by a physican in connection with the application for a transfer based on emotional need was not valid.

It should also be emphasized that there is no evidence that any transfer has been made to Verlinden since 1970 on the basis of a medical certificate.

D. **Mobile units.**

The Court of Appeals stated: (175)

> "Given other practices suggesting purposeful separation of the races in Lansing elementary schools, the district court was warranted in inferring segregative intent from the Board's use of mobile classrooms at Main and Verlinden."

The "other practices suggesting purposeful separation of the races" were at that time only the matter of boundary questions and the medical transfer policy. Neither of these practices was racially motivated. The District Court and the Court of Appeals relied on the foreseeable consequences test to draw an inference of racial motivation when a consideration of the totality of relevant facts demonstrated that the Court of Appeals was not justified in using the foreseeable effects test and that the relevant facts showed that there was no racial motivation. Facts disregarded by the District Judge and the Court of Appeals with regard to the use of mobile units at Main Street School were that two mobile units were used for a period of four years (1962-1965) at Main Street School, while mobile units were used at white schools for a much longer period of time. (393)

Mobile units, when they were employed, were used solely to relieve overcrowding. The mobile units were used temporarily until overcrowding was eased. The Board of Education anticipated that overcrowding would be reduced at Main Street in a matter of a few years, because of the fact that projects were contemplated which would result in a decrease of population in the Main Street attendance zone. The population decrease did take place and overcrowding at Main Street was eliminated.

The NAACP recognized that mobile units were used to relieve overcrowding and no claim was made at the time mobile units were being used that the Board of Education was motivated by a racially discriminatory purpose in using them at Main Street School.

E. **Assignment of teachers.**

The District Court stated that the disproportionate assignment of minority teachers to minority schools "has had the effect of increasing and perpetuating the racial identifiability of the schools in question, and that this effect was a natural and foreseeable consequence of the policy." The Court of Appeals affirmed. (175)

It is difficult to believe that at a school where the student population is 100% black the fact that the principal and three teachers out of a teaching staff of eight are black increases the racial identifiability of the school. The school in question, namely, Lincoln School, was closed in 1965.

It is also difficult to imagine that a teaching staff that is ⅓ black at a school where 80% of the students are black increases the racial identifiability of that school. The same observation may be made as to Michigan Avenue School, where 46% of the teaching staff at one time were minority and the student population of the school was over 80% black.

The District Court stated that the Board did not make any explanation for the fact that there was a disproportionate assignment of minority teachers to the three schools in question.

(87) The Board, in fact, proved that principals at the schools determined in most cases who the teachers would be in their building. (200; 201; 205; 211) The Board also established that the best teachers were hired for the available jobs. The principals selected the best teachers that were available, and the principals had in mind the needs and desires of the community served by the school. Elementary principal Dennis Semrau denied that teachers were assigned on a racial basis. (322; 323) There is no evidence that the so-called disproportionate assignment of minority teachers to minority schools was racially motivated. The foreseeable consequences test does not warrant the inference of discriminatory effect nor racial motivation. The facts establish that there was no racial motivation.

F. **One-way busing.**

The District Judge asserted that ". . . the natural and foreseeable effects of their acts [one-way busing] were clearly discriminatory." (119)

However, he also stated that ". . . [the defendant Board members] decisions instituting one-way busing cannot be said to have been motivated by a pernicious or invidious intent." While this statement would appear to eliminate any claim of constitutional violation, the District Judge went on to say that:

> "When the new board voted in 1973 to rescind the Cluster Plan, it left intact the practice of one-way busing. While the actions of the old Board can be seen on a continuum as moving toward spreading the burden of desegregation equally between Black and White students, the vote of the new Board clearly manifests a willful intent to place it solely on Black children. The Court finds that the Board knew of and intended this effect."

Some of the children who were being bused were from Lincoln and Kalamazoo attendance areas. Since Lincoln and Kalamazoo

schools had been closed these students would have had to be bused until a new school was built. The new Board desired to eliminate one-way busing by operating neighborhood schools. Vivian Riddle School operated as a neighborhood school would eliminate one-way busing. (The Court of Appeals stated that distance would require busing of students to Vivian Riddle School if it were operated as a neighborhood school. (183) The basis for this statement has not been discovered. It is erroneous in any event).

III

The Court of Appeals Found the Defendant Board Guilty of Certain Discriminatory Actions and Omissions But Erred When It Failed to Determine Whether the Discriminatory Actions and Omissions Resulted in the Condition of Segregation at Any Elementary School in Lansing School District at the Time of Trial.

This Court held in *Keyes, et al. v. School District No. 1, Denver, Colorado, et al.*, 413 US 189 at 202, 37 L Ed 2d 548, at 561-562 (1972), that

> "The essential elements of *de jure* segregation . . . stated simply . . . a current condition of segregation resulting from intentional state action. . . ."

This Court reaffirmed this holding in *Washington, et al. v. Davis, et al.*, 426 US 229 (1976). Neither the District Court nor the Court of Appeals found that the condition of segregation at any elementary school at the time of trial resulted from racially discriminatory acts or omissons of the defendant Board.

Lincoln was closed as an elementary school in 1965 and Kalamazoo Street was closed in 1970.

Verlinden Avenue School frequently referred to in the opinion of Judge Fox as "white Verlinden School" was integrated be-

fore 1967, and continues to be an integrated school. The ethnic count in September, 1975, showed Verlinden's student population was 60% white, 26% black and 12% Spanish surname. (366)

Main Street School was a segregated school in 1956, as the student population consisted of 62% Negroes. Although the creation of a zone in the Main Street attendance area in 1956 which permitted students residing there to attend either Lincoln or Kalamazoo School relieved overcrowding and reduced the percentage of black students to 55, blacks continued to move into the Main Street School service area and the proportion of black students increased accordingly. Main was 96% minority in 1964 when the total enrollment was 448 and there were 428 minority children enrolled. (383) In 1967, 312 children were enrolled at Main and 97% of these children were minority children.

In 1975 children residing in the Main Street School attendance zone totaled 255. Of these children, 201 were black, 51 were white and 3 were Spanish surname. The percentage of black elementary students residing in the Main Street attendance area in 1975 was 79%, the percentage of whites was 20% and the percentage of Spanish surname was 1%. The total number of children enrolled at Main did not change because of any act or omission on the part of the Board of Education, except that in 1964 some children were bused out of Main because of "parental pressure" to relieve overcrowding. The number of children at Main increased and decreased after 1965 not because of any act or omission on the part of the defendant Board. The decrease that took place resulted principally from industrial expansion and construction of a highway that passed through the Main Street attendance zone. Enrollment at Main Street increased because black people moved into the attendance zone of Main Street School and white people moved out. The number of white elementary

students residing in the Main Street attendance zone has risen from 7 in 1968 to 51 in 1975. The mobility of human beings accounts for the change in the student population at Main Street School and the Board of Education has not by any act or omission affected the mobility of people. The District Judge did not find that the condition of segregation that existed at Main Street School at the time of trial resulted from any intentional act on the part of the defendant Board.

Michigan Avenue School:

Michigan Avenue School was a segregated school at the time of trial. The degree of segregation was reduced because Michigan Avenue School was in the Cluster Plan. However, the District Judge did not make any finding that the segregative condition that existed at the time of trial resulted from "intentional state action."

In 1960 at least 59% of the student population at Michigan Avenue School was white. The greatest part of Michigan Avenue School service area is located in Census Tract 15 which was 59% white. (400-401) Smaller parts of Michigan Avenue School were located in Census Tracts 6 and 16, both of which were over 90% white in 1960. In 1964 the total student population at Michigan was 373 of which 280 students were minority. In 1964 the percentage of minority students was 75%. (383)

In 1975 the elementary students who resided in the Michigan Avenue attendance zone totaled 240. 186, or 78% of these students were black. 13 students, or 5%, were Spanish surname. 41 students, or 17%, were white. The defendant Board was not responsible for the decrease in total elementary student population in the Michigan attendance area from 373 in 1964 to 240 in 1975. Commercial and governmental expansion accounted for the decrease in total student population

at Michigan Avenue. No act or omission on the part of the Board accounted or resulted in the varying percentage of ethnic groups that made up the student population at Michigan Avenue. The District Judge did not find that the condition of segregation at Michigan Avenue resulted from any act or omission on the part of the defendant Board.

Vivian Riddle School:

If Vivian Riddle School were operated as a neighborhood school it would be a segregated school. However, the District Judge enjoined operation of Vivian Riddle School as a neighborhood school. If Vivian Riddle School were operated as a neighborhood school serving the attendance zones of Lincoln Street School, Kalamazoo Street School and Michigan Avenue School, there would be a total of 481 minority students and 45 white students in attendance. (370) [The total of 501 Black students shown on 371 is erroneous.] In 1961, there were 461 minority students at Kalamazoo Street School, 173 minority students at Lincoln School and 280 minority students enrolled at Michigan. The total of minority students enrolled at Lincoln, Kalamazoo and Michigan in 1964 was 914 students. The decrease of minority students in these three elementary school attendance zones is phenomenal and was completely ignored by the trial court and the Court of Appeals.

If Vivian Riddle School were operated as a neighborhood school it would end one-way busing for the students who reside in the Lincoln and Kalamazoo Street attendance zones and eliminate the complaint of Judge Fox and the Court of Appeals that the closing of Lincoln and Kalamazoo Street Schools denied the children in those attendance zones the right to attend a neighborhood school and more importantly would satisfy the desires of a majority of the people, black and white, whose children would be able to attend Vivian Riddle School if it were operated as a neighborhood school. (274) It should also be

noted that if the children residing in the Kalamazoo attendance zone had a school to attend in that zone, the percentage of minority children who attended that school would be greater than if these same children were permitted to attend Vivian Riddle School. If the children residing in the Kalamazoo Street attendance zone had a school in their zone to attend, the percentage of minority children would be 99%. At Vivian Riddle School the percentage of minority children who would be in attendance there would be 91%.

In view of the fact that busing of children out of their neighborhood schools was opposed by 41% of the affected black people in 1973 and 49% of the black people desired to have the new school that was to be constructed operated as a neighborhood school, it cannot be said that the defendant Board members who favor neighborhood schools are racially motivated.

IV

The Court of Appeals Erred in Affirming the Remedy Imposed on the Defendant Board Where the District Judge Had Not Made the Required Incremental Effects Test.

Petitioners appealed from the judgment entered by the District Judge on December 19, 1975. That judgment found liability against the petitioners but it also imposed a remedy. Subsequently the Court enlarged the remedy that was imposed on petitioners in the judgment of December 19, 1975. And petitioners appealed from the enlarged remedy. That appeal has not been resolved.

Petitioners may be premature in challenging the remedy portion of the judgment that was entered against them December 19, 1975, because of the subsequent enlargement of the remedy by the District Judge. On the other hand, petitioners do not

want to be faced with a claim that they failed to challenge the remedy imposed on them December 19, 1975, and, therefore, are bound by that remedy and the subsequent enlargement of that remedy by their failure to act at this time.

Petitioners have already discussed this subject matter to a certain degree hereinbefore when they pointed out that the District Judge had not made any determination that the current condition of segregation that existed at Michigan and Main Street Schools was the result of intentional state action.

The District Judge did not with regard to any segregative act charged by him against the defendant Board made a determination of the incremental effect of that act. And since the District Judge did not make any determination as to the incremental effect of any discriminatory act attributed to the Board of Education, he, of course, did not base the remedy that he imposed on such a determination.

The remedy that the District Judge provided was the reinstatement of the so-called Cluster Plan. The defendant Board rescinded the Cluster Plan on February 1, 1973. Judge Fox reinstated the Cluster Plan on August 10, 1973, and continued the Cluster Plan in operation under his judgment of December 19, 1975. The Cluster Plan was designed by the Superintendent and the administrative staff at Lansing School District to achieve at each of the 13 schools that were ultimately involved in the Cluster Plan a student population in which the minority children would be not less than 10% nor more than 45% of the students enrolled in each building involved in the Cluster Plan. (197) The Cluster Plan was designed to improve racial balance at the schools involved. It was not intended to remedy the racially discriminatory effects of the segregative acts attributed to the defendant Board. The percentage figures employed by the Superintendent and his administrative staff were based upon some HEW guidelines and

information that the Superintendent had gathered from other sources.

Under the decisions in *US v. Austin, Texas, School Agency* and *Dayton v. Mark Brinkman*, the District Court was in error. In view of the fact that the defendant Board has operated under a remedy imposed by the District Judge on August 10, 1973, at great expense and with the program having accomplished nothing academically or attitudinally, petitioners request that this Court consider the remedy issue that exists by virtue of the judgment that was entered December 19, 1975, and which has since been enlarged.

V

The Relationship Between the Segregative Acts Attributed to the Defendant Board by the Court of Appeals and Present Segregation Is "So Attentuated as to Be Incapable of Supporting a Finding of De Jure Segregation Warranting Judicial Intervention."

The evidence in this case did not justify ". . . a finding of *de jure* segregation warranting judicial intervention."

The District Judge determined that the movement of blacks into previously white neighborhoods changed the racial make-up of the elementary schools in the Lansing School District. (62) He also found that the defendant Board was not responsible for residential segregation. (79-80)

The District Judge found that:

> "Aside from the unequal conditions at Michigan Avenue School, the Lansing School District operated otherwise in a racially neutral manner with regard to facilities. Schools were (for the most part, but with important exceptions

discussed elsewhere in this opinion) attended by children who lived within the service area, and there is no evidence that school officials were responsible for racially imbalanced residential patterns. The same schools now used primarily by minority students were once used by Whites. It appears that the buildings have been adequately and equally maintained throughout the district. Equipment and teaching materials have been at least equal, and perhaps better than those available at other schools, due to the effective use of federal funds. These are a few White schools with small site sizes, and schools with larger sites are primarily in outlying areas annexed after 1950." (79-80)

The District Judge also found ". . . it appears that there is at present no discrimination in the hiring practices in the district." (86)

The District Judge noted that there was "considerable testimony indicating the competence of teachers in these minority schools." (87)

The District Judge stated that the old Board's ". . . decisions instituting one-way busing cannot be said to have been motivated by a pernicious or invidious intent." (119)

In view of the foregoing findings of the District Judge, it would appear that there was no basis for his finding that Lansing School District operated a dual elementary school system. These findings certainly preclude any determination "that the school authorities have carried out a systematic program of segregation affecting a substantial portion of the schools, teachers, and facilities within the school system . . ." *Keyes v. School District No. 1* at 201.

Most of the adverse findings made by the District Judge even if warranted related to matters that were of no consequence at the time of trial.

(A) The two 1957 boundary matters discussed by the District Judge did not in any way affect the racial make-up of the four schools and their service areas at the time of trial:

(1) Kalamazoo school was closed in 1970.

(2) Michigan Avenue School had been sold to the State of Michigan.

(3) Verlinden School became integrated before 1967.

(4) Main Street School's service area student population has dwindled from over 442 in 1963 to 244 in 1975.

(B) Vivian Riddle School was in process of construction and could serve the students living in the Michigan Avenue attendance area.

(C) Lincoln School was closed in 1965, and only 12 elementary students now reside in the attendance zone formerly served by Lincoln School. (370)

(D) The disproportionate assignment of minority teachers to minority schools was apparently of no consequence as the District Judge made no order requiring assignment of different numbers of minority teachers to the minority schools.

(E) Mobile units have not been used at Main Street School since 1965.

(F) There is no evidence that any transfer to Verlinden since 1970 was not valid, and white transfers since then have not exceeded four. As noted hereinbefore, Verlinden became an integrated school before 1967.

At the time of trial more black children lived in elementary school attendance zones outside the River Island Area than inside it. (369-371) A tremendous movement of black people has taken place in Lansing since 1957.

In view of the favorable findings and the fact that most of the adverse findings were at the time of trial of no consequence, there was no basis for the District Judge to find "the existence of a dual school system."

> "In *Swann*, we suggested that at some point in time the relationship between past segregative acts and present segregation may become so attenuated as to be incapable of supporting a finding of *de jure* segregation warranting judicial intervention." ***Keyes v. School District No. 1*** at 211.

The District Judge found that passage of defendant Board's resolution on February 1, 1973, rescinding the Cluster Plan resolution, was an intentional segregative act. He also found that the locating of Vivian Riddle School in a black area and the Board's desire to operate it as a neighborhood school was an intentional segregative act.

The defendant Board was restrained from carrying out its rescission resolution and was enjoined from operating Vivian Riddle School as a neighborhood school. Therefore, the defendant Board did not create a condition of segregation.

It is urged that this Court grant this petition so that the question as to whether there is a constitutional bar to rescission of an elementary school desegregation plan that is implemented before opponents of the desegregation plan can pursue their remedy judically or politically can be resolved. In this case, the majority of whites and 40% of the blacks were opposed to busing of their children from their neighborhood schools. Recall petitions were circulated and a suit was started in State court to enjoin the adoption of an elementary school desegregation plan that required busing of children from their neighborhood schools. The State court suit was removed to Federal court and Judge Fox dissolved the temporary restraining order that precluded the defendant Board from adopting an elementary school desegregation plan that required busing. Three days

later the defendant Board adopted the Cluster Plan resolution that provided an elementary school plan that required busing of children from their neighborhood school.

Prior to implementation of the Cluster Plan resolution, sufficient recall petitions were filed to require a recall election. However, a recall election could not be scheduled until November, 1972.

A fundamental question of equal protection of the laws arises: Should the legal and political rights of citizens in a free society be forever determined by the intervention of a Federal court whose order could not possibly be appealed in time to prevent action on a desegregation plan and the fortuitous event that a recall election could not be held until after the desegregation plan was implemented?

Surely in a free society citizens should be entitled to rescind a desegregation plan without regard to fortuitous events that prevented their precluding adoption and implementation of such a plan. If the desegregation plan were not constitutionally required, as the plan in this case was not, citizens should be able to rescind it without regard to when it was adopted. This is particularly true in this case where evaluation of academic results and attitudes show that the busing of chilldren has accomplished nothing. (379-381)

It is further urged that this Court grant this petition to resolve the question as to whether the desire to operate a neighborhood school system with the result that there would be racially identifiable schools in and of itself establishes racially motivated discriminatory purpose. There was no other basis for the District Judge to find that the desire of defendant Board members evidenced an intentional segregative purpose. Since the District Judge is of the opinion that a racially identifiable school is a segregated school without regard as to how it became

racially identifiable and further holds that education in a racially identifiable school plainly denies "equal educational opportunity," it would appear that his opinion as to the operation of a neighborhood school system that had racially identifiable schools might not rest on a sound legal foundation. (51; 123)

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to review the decision of the Sixth Circuit rendered herein on July 26, 1977.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-600

LANSING BOARD OF EDUCATION, a Body Corporate; and Members of the LANSING BOARD OF EDUCATION; viz., VERNON D. EBERSOLE, CLARE D. HARRINGTON, MICHAEL F. WALSH, RAY A. HANNULA, JOAN HESS, J. C. WILLIAMS, BRUCE ANGELL, JOSEPH E. HOBRLA and MAX D. SHUNK,
Petitioners,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Lansing Branch; CYNTHIA TAYLOR, JUDITH TAYLOR and ANDREA TAYLOR, by Their Father and Next Friend, JAMES R. TAYLOR; MELINDA LEA HEDLEY, CHRISTINE MICHELE HEDLEY, DOUGLAS JOHN HEDLEY and DANIEL JOSEPH HEDLEY, by Their Mother and Next Friend, JOAN L. HEDLEY; PETER MILLER and ELIZABETH MILLER, by Their Father and Next Friend, CHARLES MILLER; FRANK J. PENNONI and JAMES PENNONI, by Their Mother and Next Friend, KATHLEEN PENNONI; and DAVID KRON and LISA KRON, by Their Father and Next Friend, WALTER V. KRON,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit

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PRELIMINARY INJUNCTION

(Filed August 10, 1973)

United States of America
In the District Court of the United States
for the Western District of Michigan
Southern Division

National Association for the Advancement of Colored People, etc., et al.,
Plaintiffs,

vs.

Lansing Board of Education, et al.,
Defendants.

The jurisdiction of this court is properly invoked under 28 USC Sections 1331(a), 1343(3) and (4), this being a suit in equity authorized by 42 USC Sections 1983, 1988 and 2000d. Jurisdiction is also invoked under 42 USC Section 1981 and further invoked under 28 USC Sections 2201 and 2202, this being a suit seeking a declaration that the February 1, 1973 resolutions of the Lansing Board of Education are unconstitutional, and seeking also other relief.

Individual plaintiffs are children or parents of children who, as a result of the June 29, 1972 desegregation plan adopted by the Lansing Board of Education, attend desegregated schools. Plaintiff, National Association for the Advancement of Colored People, Lansing Branch, is an unincorporated association which sues on behalf of its membership who are members of the plaintiff class. Plaintiffs are bringing this action on their own behalf and on behalf of all persons in the City of Lansing similarly

situated. The class action is proper under Fed. R. Civ. P. 23. Because of the notoriety of the case in Lansing, the members of the plaintiffs' class have adequate notice.

The matter presently before this court is the plaintiffs' motion for a preliminary injunction to restrain the defendant Board of Education from implementing certain of its resolutions of February 1, 1973. The implementation of these resolutions would effectively revise the Board's formal Policy Statement on Equal Educational Opportunity and would also nullify the desegregation plan which was voluntarily adopted by the Board on June 29, 1972, and which was partially implemented by the Board beginning in September 1972.

I

For the purposes of ruling on the plaintiffs' request for a preliminary injunction, this court need comprehensively review only those developments in Lansing public education which have taken place since the middle 1950's, with special attention to elementary schools. The most significant developments have involved the growth of a pronounced racial concentration in some West Side elementary schools, the growth of a pronounced ethnic concentration in the north-central section of the city, and the varied responses of the Lansing Board of Education to these disturbing situations. This court finds the following facts and circumstances.

In 1950, Black people in Lansing numbered only 2,979 out of a total population of 92,129, or a little over 3%. By 1960, the proportion had changed to 6,745 Blacks out of a total of 107,807, or slightly over 6%.

Most Blacks lived on the West Side of Lansing, in the southern part of what is known as the River Island area. Following a common demographic pattern, Black people in the 1950's

moved into previously white neighborhoods in the River Island section, and the racial composition of elementary schools changed accordingly.

One such school was affected in this fashion was Main Street. In September 1956, the school was slightly overcrowded and 65% Black. At that time, the overcrowding was eliminated and the proportion of Blacks was reduced to 55% by an adjustment of boundaries. However, Blacks continued to move into the Main Street School service area, and the number of Blacks in the school continued to increase. Confessing that its original attempt to reverse the trend toward a segregated school had failed, the Board appointed a committee to make further recommendations. Among other things, this committee suggested an additional boundary change, or, alternatively, the immediate construction of an elementary school in the Heatherwood area to the northwest of Main Street School. The Board rejected the proposed boundary change because it was unwilling to require children to travel the "unreasonably long distances" judged to be necessary to make the change effective. The Board also refused to construct a new elementary school since this would, according to the Board, require the vacating of satisfactory facilities and postpone the construction of new schools badly needed elsewhere. Finally concluding that the increased Black enrollment at Main was the result of Blacks moving into the service area, the Board resolved to abandon further efforts to keep Main integrated, and further resolved to maintain equal educational opportunity through a variety of special programs.[1]

After 1957, the Board made no changes in the boundaries of Main Street School.[2] Subsequently, in the early 1960's, Main

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[1] Lansing Board of Education, Minutes, March 28, 1957. Pl. Ex. 12.

[2] Additional Stipulations, No. 4. A map showing River Island attendance areas is in West Side Educational Facilities Ad Hoc Committee, "Report and Recommendations on River Island Elementary Schools, February 24, 1972," App. III-F, Addendum No. 1, Pl. Ex. 6. [Hereinafter cited as "River Island Report 1972."]

Street School became overcrowded, and two mobile units had to be added.[3] At the same time, nearby Verlinden School, about 14 blocks, slightly over a mile, north of Main Street School was underutilized, having two vacant classrooms by 1965. Verlinden, in contrast to Main, was predominantly white. Similarly, predominantly white Barnes School, 1.2 miles southeast of Main, had one vacant classroom.[4] Although there was no evidence as to the transportation policies of the Board in the late 1950's or early 1960's, there was documentary evidence suggesting that during the 1971-72 school year Lansing transported only those students who lived more than 1.5 miles from their schools, except in cases of special needs or services.[5] If the 1.5 mile distance is accepted as a reasonable outer limit, it appears that many children in the Main Street service area could have been assigned. Probably this would not have been true as to Barnes, since the Grand River runs between Main and Barnes.

As the Board abandoned efforts to keep Main Street School racially integrated through boundary adjustments, it apparently established special transfer policies which accelerated the trend toward the school's becoming overwhelmingly Black. Since the Board retains special transfer statistics for only five years, and for a time was precluded from keeping any statistics on the basis of race, precise statistics are unavailable for the late 1950's on the operation of the Board's special transfer policies. Mrs. Clinton Canady, Jr., who served on the Lansing Citizens' Committee on School Needs, established by the Board in 1959, indicated that the Committee was disturbed by the large number of transfers out of Black schools, and especially from Main

[3] "Mobile United Locations—Historical Record 1962-1973." Def. Ex. 16.

[4] Education Committee of the Lansing Branch NAACP, "Report of the Education Committee of the Lansing Branch NAACP, January 1963-March 1965," compiled by Hortense G. Canady, Chairman at 20. Pl. Ex. 4. [Hereinafter cited as "NAACP Report 1965."]

[5] "River Island Report, 1972," App. III-F, at 4.

Street School to predominantly white Verlinden for purely racial or allegedly "medical" reasons. Both parties acknowledged that some special transfers also went from Michigan Avenue School, which was becoming predominantly Black in the early 1960's, to Verlinden. In its 1961 Report to the Board, the Citizens' Committee recommended that a policy be established which would "discourage and prevent transfer for reasons of race, nationality, or religion."[6]

The first hard statistics presented to the court on those transfers are contained in the Lansing Public Schools' "Report to Human Relations Committee," made in 1964. A chart of "Special Transfers to Schools, 1962-63, 1963-64" lists "Schools Receiving Special Transfers" and, for each of the two school years measured, "Total Transfers," and the number of "Mexican," "Negro," "Oriental," and "American Indian" transfers within this total. Since these four minority groups are the only ones customarily measured in Lansing, it is proper to infer that subtracting the number of minority transfers from the total of all transfers will give the number of white transfers. During the 1962-63 school year, Verlinden School, which was about 95% White, received a total of 25 transfers, of whom 20 were White and 5 were Black. During the 1963-64 school year, Verlinden received a total of 33 transfers, of whom 17 were White and 16 were Black. During 1962-63, the next highest number of total transfers to any school other than Verlinden was 3; during 1963-64, 5.[7]

These statistics do not tell the full story of the special transfers in the early 1960's. They do not show, for example, the service area from which the students transferred to Verlinden. How-

[6] Lansing Citizens' Committee on School Needs, "Report of the Lansing Citizens' Committee on School Needs," May 1961, at 17. Pl. Ex. 3.

[7] Lansing Public Schools, "Report to Human Relations Committee," June 25, 1964, at 154-155. [Hereinafter cited as "Human Relations Report 1964."]

ever, testimonial and documentary evidence suggested that the White Verlinden transfers came primarily from the Main Street School service area and exclusively from the Main Street and Michigan Avenue service areas combined.[8] Since the majority of the students who were allowed to transfer in 1962-63 and 1963-64 were White, and the majority of students in both Main (90%) and Michigan (74%) Schools was Black, the obvious effect of allowing the special white transfers was to accelerate the "White flight" from the schools affected.

The Board's statistics likewise do not state *why* students were allowed to transfer in such relatively large numbers into Verlinden School. The Board's "Policy Statement No. 6121: Equal Educational Opportunity," adopted on June 4, 1964,[9] stated the following with respect to transfers:[10]

> "The Board of Education recognizes that on occasion it has been necessary to deviate from the attendance-area concept and assign students to schools far removed from their homes. This has been done to eliminate overcrowding of certain schools. In individual cases, a student has been allowed to attend a school other than the one to which he normally would be assigned. Such transfers have been authorized only because of the particular, individual needs of the student—usually curricular needs—which one school is prepared to meet, another is not."

The suggestion was also made that each student was transferred for a bona fide "health" or "medical" reason.

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[8] Testimony of Mrs. Clinton G. Canady, Jr., and Mr. William L. Webb, Acting Director of Instructional Support and Director of Pupil Personnel, Lansing School District; "NAACP Report 1965," at 4-5, 19.

[9] Reprinted in full in "Human Relations Report 1964," at 2-8. Amicus Ex. A.

[10] "Human Relations Report 1964," at 8.

The plaintiffs, in contrast, contend that the Board's system of special transfers in the Main-Michigan-Verlinden area amounted to a conscious departure from the neighborhood school policy in a situation where adherence to the policy would have produced a more even racial distribution among some schools, at least temporarily. The evidence shows that the charge that the Board was operating a special transfer system which had a discriminatory effect was made repeatedly in the early 1960's. As late as the Spring of 1965, the Lansing NAACP Education Committee complained that the Board had not acted to discourage and prevent special transfers on the basis of race, as the Citizens' Committee had recommended in 1961.[11]

In its 1964 Policy Statement, the Board said it allowed departures from the regular neighborhood school policy in order to relieve overcrowding. Perhaps the special transfer of a few Black students to Verlinden (5 in 1962-63 and 16 in 1963-64) can be attributed to attempts to relieve overcrowding at Black schools. (The plaintiffs thought the Black transfers merely indicated a desire on the part of Blacks to avoid racially imbalanced schools.) However, if the relatively high number of special white transfers was for the purpose of relieving overcrowding, then it appears that the Board was operating the system with discriminatory effect, as already pointed out. A majority of those transferred to Verlinden were white, while both Main and Michigan were predominantly Black.

The second reason given by the Board in 1964 for allowing special transfers was to meet students' individual needs, "usually curricular." At trial the defendant did not attempt to justify the unusually large number of transfers to Verlinden as "curricular". Parenthetically, if the transfers were for curricular reasons, this would merely raise additional questions as to the

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[11] "NAACP Report 1965," at 5.

reasons for the curricular superiority of white Verlinden and the relative inferiority of Black Main and Michigan.

Finally, the suggestion was made that each transfer was for a bona fide "health" or "medical" reason which existed apart from the desire of some to escape from predominantly Black schools to a nearby white one. The problem with this account is the inherent improbability of relatively large number of white students having special health difficulties requiring them to attend Verlinden (20 in 1962-63, 17 in 1963-64), while the next highest school received only 3 special transfers in 1962-63 and 5 in 1963-64. The wide disparity between Verlinden and other schools suggests that the major reason for transferring to Verlinden was other than medical, and the statistics on the racial balance of Main, Michigan and Verlinden lend credibility to the charge that the transfers to Verlinden were racially motivated and allowed by the Board with the factor of race principally in mind.

Thus, it appears probable to this Court, weighing all the relevant evidence submitted to date, that the "neighborhood school policy" was not administered in a racially neutral manner in the late 1950's and early 1960's in the River Island area, and specifically with respect to the Main, Michigan and Verlinden schools. It is probable that the boundaries established under the "neighborhood school policy" in the Main-Michigan-Verlinden area were deliberately frozen in the late 1950's, after previous adjustments at Main, in order to contain Blacks in a few schools and in order to avoid integrating Verlinden. The large number of special transfers to Verlinden and the relatively short distances involved suggest that the distance from Main Street and Michigan Avenue School service areas to Verlinden was not in fact so great as to preclude boundary adjustments in order to achieve a more even racial distribution without the necessity of resorting to transportation of students by bus. Similarly, it appears probable that the Board sanctioned special

transfers from Main and Michigan Schools with the conscious purpose and obvious effect of allowing white students to escape from predominantly Black schools and with the effect, too, of accelerating the trend towards an even more severe racial concentration.

Apart from the matters of boundaries and special transfers, the Lansing Board was in the middle 1960's becoming increasingly conscious of the severe racial concentration which existed in several elementary schools. In 1964, Lansing had 16,654 elementary students in 39 elementary schools. Of these 1,694, or about 10%, were Black, and about 77% of these attended only four schools: Lincoln had 173 students, all Black; Main Street School had 424 Black of 444, about 95%; Kalamazoo School had 454 Blacks out of 558, about 81%; Michigan Avenue School had 276 Blacks out of 373, about 74%. At the other end of the spectrum, 15 elementary schools had no Blacks enrolled, and 10 other elementary schools had less than 10 Blacks.[12]

On June 4, 1964, the Lansing Board of Education adopted the first of a series of important resolutions, a "Policy Statement on Equal Educational Opportunity," generally acknowledging its obligation to provide equal educational opportunity to all children insofar as it was able to do so. "Today's schools," the statement said

> "must provide each child with an equal opportunity to learn and to fulfill his innate potential. The schools must assist each child in discovering and developing his potentialities, and must aid each child in recognizing his inherent worth to himself and to society. . . .
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[12] Additional Stipulations, No. 14. "Human Relations Report 1964," at 9-10.

The Board of Education shall not establish or knowingly sustain any condition which is detrimental to a child's sense of individual worth, providing it is wthin the power of the Board to change such condition."

At the same time, the Board asserted that its attendance areas for elementary and secondary schools had been established on a geographical basis without regard to race, creed, religion or national origin. While acknowledging that this neighborhood school policy resulted in an "imbalance of minority group pupils," the Board stated that this circumstance resulted from factors beyond the control of the Board, and stated that the policy would continue.[13]

In the fall of 1964, the Board initiated a policy of transporting students out of the River Island area in order to relieve overcrowding and to relieve racial isolation of White schools in other parts of the Lansing School District. This policy continued until the initiation of a more comprehensive transportation plan in the 1972-73 school year. Complementing this practice was the closing of two predominantly Black schools in the River Island area, Lincoln in 1965, and Kalamazoo in 1970. (In 1968, the Board resolved to close all predominantly Black schools in the River Island area, but this resolution was not fully executed before the 1972-73 school year.) Before 1972, the transportation of elementary school children to reduce racial concentrations in the elementary schools was one-way, and the majority of the children transported was Black.[14] During the 1971-72 school year, 510 students were transported

[13] Reprinted in "Human Relations Report 1964," at 5-8. Emphasis added. In 1963, the People of the State of Michigan adopted a new Constitution which provided, "Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color, or national origin." Art. VIII, Sec. 2. The Board's Policy Statement is properly in accordance with this provision.

[14] Stipulation No. 26.

for the purpose of reducing racial isolation. Of these, 460, or about 90%, were Black, and 50, or about 10%, were White. During the same year, 1,900 Whites were transported for purposes other than integration.[15]

While taking these steps to ameliorate the difficulties in the River Island area, the School Board decided it needed more detailed information and more informed citizens opinion and recommendations concerning additional steps which might be taken. On February 11, 1965, the Lansing Board of Education resolved to create a Citizens' Advisory Committee on Educational Opportunity, to be composed of citizens from all parts of the district. Among other things, the Committee was charged with making a comprehensive examination of steps to be taken to insure an equal educational experience for all children residing in the school district and an examination, too, of the possibility of realignment of school service areas.[16]

In the course of their study, the Committee collected statistics on the racial composition of Lansing schools. The data collected on the fourth Friday of the 1965 school year revealed a total of 17,882 elementary school students, of which 1,853, or approximately 10.3% were Black. Of 48 elementary schools existing at that time, 11 had no Black students whatsoever; 7 had either 1, 2, or 3 Black students. On the other hand, several schools were disproportionately Black: Main was 86% Black; Kalamazoo was 79.3% Black; Michigan was 71.3% Black. Six other elementary schools were between 11.5% and 20.5% Black. In addition, the Committee made a more detailed study

[15] Testimony of William L. Webb.

[16] Citizens' Advisory Committee on Educational Opportunity, "Report of the Citizens' Advisory Committee on Educational Opportunity," Submitted to the Board of Education, June 23, 1966, App. A, at 52-53. [Hereinafter cited as "Citizens' Committee Report 1966."]

of many schools. On the basis of all their collected data, the Committee reported, *"Lansing has segregated schools."*[17]

The Committee also studied the effects of segregation. "The work of the Committee," according to its 1966 Report, "involved first-hand observation of the effects of segregated education. Meetings of the committee of the whole, meetings of subcommittees, and individual study and evaluation led to a unanimous conclusion that de facto segregation in our educational system has done and will continue to do great harm both to the individuals involved and to the community as a whole. The committee believes that segregated education and quality education are not compatible. . . ." Similarly, the Committee concluded that "segregated education is unequal education."[18]

Several recommendations followed from these conclusions. Among other things, the Committee recommended that an existing policy of transporting children from over-crowded schools to other areas of the city continue. (The overcrowded schools were mostly Black, and those transported were consequently mostly Black.) The Committee also recommended that the largely Black schools be phased out completely, and the children transported to other areas of the city. Over the long run, said the Committee, consideration should be given to a variety of positive programs designed to achieve an integrated, quality education.[19]

Following the receipt of the Citizens' Advisory Committee Report, the Lansing Board of Education amended its Policy Statement on Equal Educational Opportunity to read, in part, as follows:

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[17] Id., App. R-3, at 88-89; 3-4. Italics in original.

[18] Id. at 2, 7.

[19] Id. at 9-12.

"Equal educational opportunity is most possible to achieve in schools where there is reasonable balance in the racial composition of the student population. It shall be the goal of this school district to achieve such balance. This Board of Education believes that in any racially-mixed community segregated education and quality education are not compatible and that steps must be taken to insure that the school system advances further toward the goal of true equality of educational opportunity.

. . .

The Board of Education shall not knowingly establish or sustain any condition which is detrimental to a child's sense of individual worth, and shall actively seek to find ways to change these conditions when such conditions inhibit learning.

. . . However painful the admission, the Lansing Board of Education accepts as a fact that this school district has racially imbalanced schools. Further, it believes not only that segregation is wrong; it asserts with equal conviction that integration is right. The Board of Education recognizes the educational values inherent in the neighborhood-school concept. On the other hand, this Board believes that when neighborhood schools result in segregated education and that deviation from the neighborhood-school concept can mean integrated education, that such deviation is much more desirable."[20]

Between 1967 and 1971, the Lansing Board of Education and the administrative authorities conducted further studies and made further recommendations concerning all aspects of the problem of providing an equal, quality education for all Lansing

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[20] Adopted Jan. 19, 1967. Reprinted in "In-Service Training: Board Members and Administrators, Lansing, Mi. January 27 and 29, 1972," [unpaginated]. Pl. Ex. 9. [Hereinafter cited as "In-Service Training."]

students. By 1971, the original 1966 Citizens' Advisory Committee Report was somewhat dated, so the Board resolved to establish a new and second Citizens' Advisory Committee on Educational Opportunity. Among other things, the Committee was to review the 1966 Report and make new recommendations where necessary; to review the existing policies and official statements of the Board regarding equal educational opportunity, and recommend additions or changes; and to recommend to the Board a plan and timetable for the final desegregation of all schools in the district. On the basis of 1971-72 school year statistics, the Committee concluded that Lansing elementary schools were "*still segregated*, in terms of governmental requirements."[21]

An examination of all the relevant statistical evidence presented to the Court, including the stipulations of the parties, has revealed the following about the Lansing School District during the 1971-72 school year, on the eve of the adoption of the desegregation plan which is the principal subject of this litigation. The District covered an area of approximately 50 square miles, extending in many places beyond the boundaries of the City of Lansing itself. About 33,000 students live in the District. Of these 4,600, or about 14%, were Black; 2,400, or about 7%, were Spanish-American, and .3% were American Indians. About 18,800 students attended the 48 elementary schools. Of these students, approximately 2,600, or 14%, were Black; 1,400, or 7%, Spanish-American. Two elementary schools were predominantly Black: Main Street School was 85% Black and Michigan Avenue School was approximately 80% Black and 10% Spanish-American. Cedar School, in the northern part of Lansing outside the River Island area was 49% Spanish-American, 40% White, and 4% Black.[22]

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[21] Citizens' Advisory Committee on Educational Opportunity, "Report of the Citizens' Advisory Committee on Educational Opportunity, April 20, 1972," at 1. [Hereinafter cited as "Citizens' Committee Report 1972."]

[22] Lansing School District, "Proposal for Assistance Under Public Law 92-318, Title VII—Emergency School Aid," [1972], at 5.

In addition to allegations that the School Board intentionally committed numerous acts and omissions which have contributed to severe racial concentration among elementary school students since the late 1950's, the plaintiffs allege that the defendant engaged in discriminatory employment practices in the early 1950's and the discriminatory assignment of minority teachers to minority schools until very recently.

There is uncontradicted evidence that the School Board was engaged in discriminatory hiring practices in the past. The first minority teacher was not hired until 1950[23] Mrs. Olvia I. Letts, who is Black, and now an area principal and principal of Horsebrook School, testified that she originally applied for work as an elementary teacher in Lansing in January 1951. The Assistant Superintendent, Mr. Averill, wrote her that Lansing schools were not hiring Blacks at that time. Subsequently, Mrs. Letts was hired, and she became the first Black elementary school teacher in the Lansing system. Jerusha H. Bonham, who is also Black, and who is now a social worker for the Lansing Public Schools, testified that when she first applied for employment with the Lansing public schools in July 1953, she was told that Lansing had already hired its "quota" of Blacks for the season.

Subsequently, the Lansing School District began hiring more minority personnel, including Spanish-Americans in addition to Blacks, but the District has not hired the same proportion of minority personnel as the proportion of minority students.[24] The following chart illustrates this fact:

Pl. Ex. 2. [Hereinafter cited as "1972 Proposal."] "River Island Report 1972," App. III-F, at 1. "Ethnic Count Report, Five Year Period Nov. 1967-Dec. 1971," stipulated as accurate, Additional Stipulations, No. 18. Stipulations 2, 7, 10, 15. Some slight discrepancies appear among various statistical stipulations and documentary statistics accepted as accurate. These discrepancies are minor, and do not affect the ultimate conclusions.

[23] Additional Stipulations, No. 12.

[24] Id.

PERCENTAGE OF MINORITY PERSONNEL AND MINORITY STUDENTS[25]

Year	*Minority* Personnel***	*Percent of Total Personnel*	*Percent Minority Students*
1967-68	66	3.8%	14 %
1968-69	70	4.2%	15.3%
1969-70	92	5.1%	16.7%
1970-71	130	7.9%	18.7%
1971-72	154	9.2%	20.4%

* "Minority" includes Black and Spanish-American.

** "Personnel" includes certified Administrators, Coordinators, and Elementary and Secondary School Teachers.

Thus, it appears probable that the Lansing School District has engaged in discriminatory hiring practices in the past. However, the present Superintendent of Schools, Dr. Carl I. Candoli, testified that there has been no discrimination in hiring practices for the last two years, and there is no reason to doubt this testimony as to present policies.

The plaintiffs also contend that the Lansing School District has assigned minority teachers in a racially discriminatory fashion. It was stipulated that "the Board of Education has exercised a policy of assigning Black teachers to predominantly Black Schools, disproportionately; with the two remaining Black schools, Main and Michigan, having 33% and 40% minority teachers respectively."[26] In January of 1972, 7 elementary

[25] From "In-Service Training;" testimony of Mr. Dwayne Wilson, Advisory Specialist for Equal Educational Opportunity, Lansing School District.

[26] Additional Stipulations, No. 13.

schools which had 10% or less minority student enrollment had no minority teachers at all.[27] Thus, in the absence of an explanation from the Board for these differences, it appears probable that the Board has to a significant degree discriminatorily assigned minority teachers to minority schools.

The plaintiffs also contend that the physcial facilities of predominantly Black schools have been inferior to those of White schools in the Lansing School District. While it appeared that some of the schools in the River Island area, including predominantly Black schools, were below the District average in one or more respects, it did not appear that these deficiencies were so significant that the schools were unsafe or inoperable. Moreover, the School Board has apparently made an effort to keep River Island facilities up to standard through modernization and the acquisition of equipment through federal funds. Thus, to the extent that the problem of overcrowding and its attendant difficulties can be separated from the problem of facilities, it does not appear that the Board has acted discriminatorily with regard to physical plant or equipment.

As the 1971-72 school year drew to a close, the Lansing School Board reviewed the history of the problem of racial and ethnic concentration in the elementary schools, and considered the recommendations of the Citizens' Advisory Committee on Educational Opportunity, whose Report had been submitted in April. The Committee had suggested the adoption of one of three alternative plans for the integration of the District. The Committee stated that its plans had been framed in recognition of the parameters established by legal decisions rendered since the early 1950's on the subject of desegregation of public education.[27a] On June 1, the Board resolved to consider its own cluster plan for desegregation at a subsequent meeting.

[27] Testimony of Mr. Dwayne Wilson; "In-Service Training."

[27a] "Citizens' Committee Report 1972," at vii.

On June 15, 1972, James E. Slack and others, as next friends of minor children, filed a civil action in the Circuit Court of the State of Michigan in and for Ingham County against the Board of Education of the Lansing School District and others, charging that the consideration, adoption, and implementation of the proposed cluster plan would violate their constitutional rights. The Circuit Court issued a temporary restraining order preventing the Board from considering or adopting its plan. As a result of a petition filed by the Defendant on June 19, 1972, the cause was removed to this court. After a hearing held on June 26, the temporary restraining order was set aside. Subsequently, by stipulation of the parties the cause was dismissed without prejudice.

Following public hearings and extensive public discussions, the Board of Education, on June 29, 1972, resolved to adopt its proposed cluster plan. In the extensive Preamble to its Resolution, the Board noted that it had fully considered the 1972 Citizens' Advisory Committee recommendations and also the information and comments submitted to it during public hearings. The Board further stated its conclusion that there remained in Lansing several elementary schools which were, "by definition, segregated schools." The Board finally reaffirmed the 1964 Policy Statement on Equal Educational Opportunity, including in its brief that segregation in schools was wrong and integration in schools was right, and went on to adopt the cluster plan in order "to further progress toward equalization of educational opportunity in the Lansing School District."[28]

The full desegregation plan as adopted by the Board includes provisions for three cluster groups, two to be implemented in 1972-73, and one to be implemented in addition during 1973-74. The plans involve only grades three through six. No kindergarten, first, or second grade students are involved in any of the three clusters. According to the original schedule, further study and planning was to take place during the period 1972-74 to the end of developing and implementing additional clusters as the need appeared.

[28] Lansing Board of Education, Minutes, June 29, 1972. Pl. Ex. 8.

Clusters One and Two were implemented in September, 1972, and remained in existence throughout the 1972-73 school year.

Cluster One involves four schools, Main Street, Barnes Avenue, Elmhurst, and Lewton. The operation of Cluster One required the elimination of the fifth and sixth grades as Barnes and Lewton Schools and the elimination of the third and fourth grades at Main and Elmhurst Schools. Transportation is required as follows in Cluster One: (A) All of the third and fourth grade students are transported from Main to Elmhurst. (B) All of the fifth and sixth grade students are transported from Barnes to Main. (C) All of the third and fourth grade students are transported from Elmhurst to Barnes and Lewton. (D) All of the fifth and sixth grade students are transported from Lewton to Elmhurst.[29] The distances involved are not great. The approximate distance between Elmhurst and Barnes is .8 mile; between Elmhurst and Lewton, 1.2 miles; between Barnes and Main, 1.2 miles; between Main and Elmhurst, 2.1 miles; between Main and Lewton, 2.6 miles. While travel time depends on traffic patterns and other variables the plaintiffs offered a formula to estimate the average travel time. Multiply the first miles by five minutes and each subsequent mile by two minutes.[30] Thus, by this formula, the average time to travel the longest distance involved in Cluster One, 2.6 miles, is 8.2 minutes.

Cluster Two likewise involves four schools: Michigan Avenue, Maple Hill, Cavanaugh, and Everett. The operation of Cluster Two required the elimination of the fifth and sixth

[29] Additional Stipulations, No. 8.

[30] Distance Chart, Pl. Ex. 10.

grades at Cavanaugh and Maple Hill and the elimination of the third and fourth grades at Everett and Michigan Avenue schools. Transportation is required as follows in Cluster Two: (A) All of the fifth and sixth grade students are transported from Cavanaugh to Michigan. (B) All of the third and fourth grade students are transported from Everett to Cavanaugh and Maple Hill. (C) All of the fifth and sixth grade students are transported from Maple Hill to Everett. (D) All of the third and fourth grade students are transported from Michigan to Cavanaugh; some of the fifth and sixth grade students are transported from Michigan to Everett.[31] The approximate distances involved are as follows: Between Cavanaugh and Everett, .8 mile; between Everett and Maple Hill, .4 mile; between Cavanaugh and Michigan, 3.4 miles; between Michigan and Everett, 3.6 miles.[32] The longest travel time, computed according to plaintiffs' formula, is approximately 10.2 minutes.

The parties have stipulated as to the impact of the cluster plans on the racial and ethnic composition of the schools involved. The following chart illustrates the changes which have taken place. The column 1971-72 indicates the percentage of each school which was minority in the last full school year before the clusters were implemented. The 1972-73 column indicates the composition of the schools with the clusters in effect.

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[31] Additional Stipulations, No. 8.

[32] Distance Chart, Pl. Ex. 10.

CLUSTERS ONE AND TWO[33]
% Minority*

Cluster One	*1967-68*	*1968-69*	*1969-70*	*1970-71*	*1971-72*	*1972-73*
Main	97%	97%	86%	87%	89%	62%
Barnes	6%	5%	6%	6%	7%	16%
Elmhurst	4%	8%	9%	8%	7%	18%
Lewton	0%	0%	1%	15%	10%	21%
Cluster Two						
Maple Hill	1%	11%	16%	17%	13%	23%
Michigan	85%	84%	90%	92%	91%	55%
Cavanaugh	0%	1%	3%	4%	4%	23%
Everett	2%	2%	2%	2%	4%	16%

* "Minority" includes Black and Spanish-American.

When implemented, Cluster Three will involve five schools: Grand River, High, Oak Park, Cedar and Post Oak. Cluster Three will require the elimination of the third and fourth grades at Grand River and Post Oak Schools, and the elimination of the fifth and sixth grades at High, Oak Park and Cedar Schools. The plan requires transportation of third and fourth grade students from both Grand River and Post Oak to both High and Oak Park-Cedar. Fifth and sixth grade students will be transported from High to Post Oak and from Oak Park-Cedar to Grand River.[34] As with the other clusters, the distances involved in Cluster Three are not great. The approximate distance between

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[33] From Stipulation No. 15.

[34] Lansing Board of Education, Minutes, June 29, 1972, App. C. Pl. Ex. 8. Neither the testimonial nor documentary evidence on Cluster Three was an extensive as that on Clusters One and Two.

Grand River and High is .4 mile; between Grand River and Oak Park-Cedar, .8 mile; between High and Post Oak, 1.8 miles; and between Post Oak and Oak Park-Cedar, 2.6 miles. Again applying the travel time formula, it appears that the average time to travel the longest distance involved in Cluster Three will be 8.2 minutes.[35]

The impact of the implementation of Cluster Three on the racial and ethnic composition of the schools involved[35a] is illustrated in the following chart:

CLUSTER THREE

% Minority

(Black and Spanish-American)

	1967-68	*1968-69*	*1969-70*	*1970-71*	*1971-72*	*1972-73**	*1973-74***
Cedar	41%	41%	46%	45%	55%	58%	48%
Grand River	32%	27%	31%	38%	35%	38%	43%
Oak Park	17%	25%	30%	31%	36%	41%	41%
Post Oak	4%	4%	4%	3%	3%	6%	10%
High	28%	31%	34%	34%	34%	33%	31%

*Data for 1967-68 through 1972-73 school years from Stipulation No. 15.

**Data for 1973-74 from Lansing School District, "Proposal for Assistance under Public Law 92-318, Title VII—"Emergency School Aid," Table I, at 6. Pl. Ex. 2.

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[35] Distance Chart, Pl. Ex. 10.

[35a] Since the Board adopted Cluster Three after extensive study of the general problem and with the goal of reducing undue racial and ethnic concentration in the schools affected, in the absence of evidence or argument from either party to the contrary, it is assumed that Cluster Three would accomplish the intended result.

Before the cluster plans could be implemented, some Lansing residents undertook to delay or prevent the implementation of the cluster-school plan by removing from office those Board members who had voted to adopt the plan, and replacing them with members who were hostile to the desegregation program. Recall petitions were circulated, signed, and duly filed. A recall election was scheduled for November 7, 1972.

On October 17, 1972, the National Association for the Advancement of Colored People and individual students and their parents who reside in the Lansing school district filed the present action in this court. The plaintiffs asked the court to enjoin the pending recall election and also requested a declaratory judgment and an injunction to prevent the Board from repealing, replacing, or otherwise nullifying the cluster-school plan which the Board had adopted on June 29. Following a hearing, this court on October 27, 1972, refused to enjoin the recall election, but retained jurisdiction on the other matters in this cause.

The election of November 7, 1972, resulted in the recall of five members of the Lansing Board of Education who had voted in favor of the cluster-school plan of June 29. The resultant vacancies were filled in a special election held on January 11, 1973.

At its meeting of February 1, 1973, the newly constituted Board amended Policy Statement 6121 on Equal Educational Opportunity to *omit*, in addition to other language, the following:

> "It is the position of this Board that there are three ingredients to a successful program for disadvantaged children: compensatory education, improvement of self-concept, and social and racial integration. It is also the position of this Board that this school system must devise some means of providing for each of these ingredients . . .
>
> Equal educational opportunity is most possible to achieve in schools where there is reasonable balance in the racial

composition of the student population. It shall be the goal of this school district to achieve such balance. This Board of Education believes that in any racially-mixed community segregated education and quality education are not compatible and that steps must be taken to insure that the school systems advances further toward the goal of true equality of educational opportunity.

. . .

The Board of Education shall not knowingly establish or sustain any condition which is detrimental to a child's sense of individual worth, and shall actively seek to find ways to change these conditions when such conditions inhibit learning."

The Board amended Policy Statement 6121 in this fashion because (1) it rejected the idea that there was segregated education in Lansing; (2) it concluded that there is a vagueness about "better racial balance"; (3) it believed that better racial balance did not necessarily improve the educational opportunities of the school children.[36]

At the February 1 meeting, the Board adopted the following Resolution rescinding the June 29, 1972 plan:

> "Whereas, this Board of Education recognizes that there is a wide diversity of feelings in the community to the cluster plan as an educational experiment, and, whereas, there is no conclusive research or evidence to support the contention that the cluster plan, as conceived and instituted does or will improve the educational achievement of the pupils affected, and, whereas the Board feels that the neighborhood family school is preferred for elementary students by the majority of the citizens of this school district, and, whereas the cooperation of parents is essential

[36] Proceedings on Proposed Stipulations, May 24, 1973, at 8-9.

> to the well being of any school system, and, whereas, the community's financial support is vital to the operation of the school district, and, whereas there are no schools in this system where an ethnically-imbalanced student population has resulted from an act of de jure segregation; now, therefore, be it resolved that in accordance with the revised policy 6121, the cluster plan as adopted on June 29, 1972, be rescinded at the end of this school year (June 30, 1973) . . ."

The Resolution went on to state that the attendance patterns which existed in 1971-1972 in kindergarten through sixth grade would be restored.[37]

The above table, "Clusters One and Two," indicates the effect of rescission on the schools involved in the two clusters. The 1972-73 column, as noted, is the percentage of minority students in each cluster school with the clusters in effect. If the plan were effectively rescinded, it is reasonable to predict that these schools would return to approximately the percentage of minority students which prevailed in 1971-72. Although the percentages of minority pupils could be expected to vary slightly in 1973-74 from the 1971-72 percentages because of shifts in neighborhood racial composition, the historical record indicates that neighborhood shifts rarely take place with such extreme rapidity that the variation would be significant during the period a preliminary injunction would be in effect. The pending expansion of the Capitol complex in the Michigan Avenue School area will probably displace some Black people, but this should not change the proportion of Blacks in the old Michigan Avenue attendance area. Should a large number of Blacks suddenly move into one or more of those school attendance areas which was predominantly White in 1971-72 in violation of all reasonable expectations, then the terms of a preliminary injunction could be altered to meet the new conditions.

[37] Proceedings on Proposed Stipulations, May 24, 1973, at 10-11.

The table "Cluster Three" indicates what would happen if the cluster were not implemented.

On February 27, 1973, at a hearing before this court in the present case, the plaintiffs moved for a temporary restraining order, which was denied. Leave was granted to the plaintiffs to file a supplemental complaint, which they did immediately. In that complaint, the plaintiffs requested, among other things, a preliminary injunction (a) requiring the defendant to cease and desist from effectuating the revision of that Equal Educational Opportunity Policy of the Lansing School District and the nullification of the plan of June 29, 1972, to desegregate the Lansing School District; and (b), requiring the defendant to reinstitute the plan of June 29, 1972, to desegregate the Lansing School system and to take all steps necessarily attendant thereto. It is this request for a preliminary injunction which is now before the court.

Defendant denies that the plaintiffs are entitled to the requested preliminary injunction. Defendant contends that the plaintiffs have made no showing that their constitutional rights have been violated, or are about to be violated, or that the plaintiffs have suffered or will suffer irreparable harm.

II

Conclusions

1. The court finds that many elementary schools in the Lansing School District were, at least from the late 1950's until the implementation of the cluster school plan in September 1972, segregated.

The latest Supreme Court desegration decision stated, "What is or is not a segregated school will necessarily depend on the facts of each particular case. In addition to the racial and ethnic composition of a school's student body other factors,

such as the racial and ethnic composition of faculty and staff and the community and administration attitudes toward the school must be taken into consideration." Keyes v. School District No. 1, 41 U.S.L.W. 5002, 5005 (June 21, 1973). Previously the Court wrote:

> "In Green [Green v. County School Board, 391 U.S. 431, 20 L.Ed. 2d 716, 88 S.Ct. 1689 (1968)], we pointed out that the existing policy and practice with regard to faculty, staff, transportation, extra-curricular activities, and facilities were among the most important indicia of a segregated system. 391 U.S., at 435. Independent of a student assignment, where it is possible to identify a 'white school' or a 'Negro school' simply by reference to the racial composition of teachers and staff, the quality of school buildings and equipment, or the organization of sports activities, a *prima facie* case of violation of substantive constitutional rights under the Equal Protection Clause is shown.
>
> "When a system has been dual in these respects, the first remedial responsibility of school authorities is to eliminate invidious racial distinctions. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 18, 28 L.Ed.2d 554, 91 S.Ct. 1267 (1971)."

In 1964, before the closing of Lincoln School, about 77% of Lansing's Black elementary school children were concentrated in 4 of Lansing's 39 elementary schools. Lincoln School was 100% Black; Main, about 95%; Kalamazoo, about 81%; and Michigan, about 74% Black. At the other end of the spectrum, 15 elementary schools had no Blacks whatsoever enrolled. In a school district in which about 10% of all elementary students were Black, these schools were segregated by any standard that has come to the court's attention. In 1965, Lincoln School was closed, and in 1970, Kalamazoo School was likewise closed. In 1972-73, Main Street School

was 85% Black and Michigan Avenue School was about 80% Black and 10% Spanish-American. Those students in the southern portion of the River Island area who were without neighborhood schools were bussed to schools, usually White, in other parts of the city. However, while the school closings and transportation reduced the number of segregated schools and likewise reduced the racial isolation of many students, the burden of this integration effort fell overwhelmingly on Blacks. During the 1971-72 school year, about 90% of the 510 students who were transported for purposes of integration were Black. Mindful of the requirement that the court consider "transportation" as one of the indicia of a segregated system, Swann, supra, 402 U.S. at 18, the court cannot say that the reduction of the number of segregated schools by busing mostly Blacks significantly altered the segregated nature of Lansing elementary schools. Furthermore, the Lansing School District has assigned Black teachers to predominantly Black schools, disproportionately, and this policy continued in effect with respect to Main and Michigan in 1971-72. Finally, the conclusion is inescapable that both the Lansing community and the school authorities have regarded the elementary schools as segregated. The two Citizens' Committees which reported in 1966 and 1972 found the schools to be segregated, and the Board of Education found likewise in crucial policy statements and resolutions in 1964, 1967, and 1971.

2. The Lansing Board of Education adopted the cluster plan on June 29, 1972, in order to meet what it reasonably conceived to be its constitutional obligations under the Michigan Constitution and laws under the Fourteenth Amendment of the United States Constitution. Given the factual background, the Board reasonably concluded that Lansing elementary schools were segregated, that in the racially-mixed Lansing community segregated education and quality education were not compatible, and that further steps had to be taken to insure that the school system advanced toward the goal of true equality of educational opportunity.

The Board likewise had firm grounds for concluding that it had a constitutional duty to adopt a desegregation plan.

The Fourteenth Amendment of the United States Constitution provides in Section 1 that "No state shall . . . *deny* to any person within its jurisdiction the equal protection of the laws." (Emphasis supplied.) In Brown I, decided in 1954, the Supreme Court found that "separate educational facilities" were "inherently unequal," and declared that state-sponsored segregation violated the Equal Protection Clause of the Fourteenth Amendment, Brown v. Board of Education of Topeka, 347 U.S. 483, 495, 98 L.Ed. 873, 74 S.Ct. 686. Subsequently, in Brown II, the Court ordered desegregation "with all deliberate speed," 349 U.S. 294, 301, 99 L.Ed. 1083, 75 S.Ct. 753 (1955). Conscious of their obligations under the United States Constitution, the people of the State of Michigan in 1963 adopted a new State Constitution containing the following provisions:[38]

ARTICLE VIII. Education.

"Encouragement of education. Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

"Free public elementary and secondary schools; discrimination. Section 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. *Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.*

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[38] The following parallels this court's previous discussion of the subject of the impact of Michigan law on desegregation suits in Oliver v. Kalamazoo Board of Education, 346 F.Supp. 766, 778-779 (W.D. Mich), aff'd. 448 F.2d 635 (6th Cir. 1971).

In their explanatory address to the people required by the Legislature,[39] the Delegates to the Michigan Constitutional Convention stated, *"The anti-discrimination clause is placed in this* [Education] *section as a declaration which leaves no doubt as to where Michigan stands on this question."*[40] (Emphasis supplied.)

The Michigan Constitution of 1963 established a State Board of Education with broad authority over public education. Article VII, Section 3 of this Constitution provides:

> *Leadership and general supervision over all public education,* including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, *is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education,* including higher education, and shall advise the legislature as to the financial requirements in connection therewith." [Emphasis added.]

In addition, the Constitution created a Civil Rights Commission to secure the equal protection of the civil rights of the people of Michigan.

Article V, Section 29, of the 1963 Constitution of the State of Michigan, provides as follows:

> "Civil rights commission; members, term, duties, appropriation. Sec. 29. There is hereby established a civil rights commission which shall consist of eight persons, not more than four of whom shall be members of the same political party, who shall be appointed by the governor, by and with the advice and consent of the senate, for four-year terms not more than two of which shall expire in the same year. *It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination."*

[39] Act No. 8, April 17, 1961, Michigan Public Acts of 1961, at 8.

[40] Michigan Constitutional Convention of 1961-62, "What the Proposed New State Constitution Means to You," 77 (1962).

Pursuant to their constitutional mandate, the State Board of Education of Michigan and the Michigan Civil Rights Commission declared the following:

> "Joint Policy Statement of the State Board of Education and Michigan Civil Rights Commission on Equality of Education Opportunity.
>
> "In the field of public education, Michigan's Constitution and laws guarantee every citizen the right to equal educational opportunities without discrimination because of race, religion, color or national origin. Two departments of state government share responsibility for upholding this guarantee. The State Board of Education has a constitutional charge to provide leadership and general supervision over all public education, while the Michigan Civil Rights Commission is charged with securing and protecting the civil right to education.
>
> "In addition to the declaration of public policy at the State level, the United States Supreme Court, in the case of Brown v. Board of Education, ruled: 'that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.'
>
> "The State Board of Education and the Michigan Civil Rights Commission hold that segregation of students in

educational programs seriously interferes with the achievement of the equal opportunity guarantees of this state and that segregated schools fail to provide maximum opportunity for the full development of human resources in a democratic society.

"The State Board of Education and the Civil Rights Commission jointly pledge themselves to the full use of their powers in working for the complete elimination of existing racial segregation and discrimination in Michigan's public schools. It shall be the declared policy of the State Board of Education that in programs administered, supervised, or controlled by the Department of Education, every effort shall be made to prevent and to eliminate segregation of children and staff on account of race or color.

"While recognizing that racial imbalance in Michigan schools is closely related to residential segregation patterns, the State Board of Education and the Civil Rights Commission propose that creative efforts by individual school districts are essential and can do much to reduce or eliminate segregation. Local school boards must consider the factor of racial balance along with other educational considerations in making decisions about selection of new school sites, expansion of present facilities, reorganization of school attendance districts, and the transfer of pupils from overcrowded facilities. Each of these situations presents an opportunity for integration.

"The State Board of Education and the Civil Rights Commission emphasize also the importance of democratic personnel practices in achieving integration. This requires making affirmative efforts to attract members of minority groups. Staff integration is a necessary objective to be considered by administrators in recruiting, assigning, and promoting personnel. Fair employment practices are not only required by law; they are educationally sound.

"The State Board of Education and the Civil Rights Commission further urge local school districts to select instructional materials which encourage respect for diversity of social experience through text and illustrations and reflect the contributions of minority group members to our history and culture. A number of criteria are enumerated in 'Guidelines for the Selection of Human Relations Content in Textbooks,' published by the Michigan Department of Education.

"The State Board of Education and the Civil Rights Commission believe that data must be collected periodically to show the racial composition of student bodies and personnel in all public schools, as a base line against which future progress can be measured. Both agencies will begin next month to assemble information on the present situation.

"To implement these policies the State Board of Education has assigned staff of the Department of Education to work cooperatively with the Civil Rights Commission and local school authorities for the purpose of achieving integration at all levels of school activity. The Michigan Civil Rights Commission also stands ready to assist local school boards in defining problem areas and moving affirmatively to achieve quality integrated education.

"Adopted and signed this twenty-third day of April, 1966," and it is signed by all of the members of the State Board of Education and the Michigan Civil Rights Commission. The Chairman of the Civil Rights Commission at that time was The Honorable John Feikens, who is presently a United States District Judge in the Eastern District of Michigan.

This court finds that in adopting the desegregation plan of June 29, 1972, the Lansing Board of Education acted in ac-

cordance with the mandate of the 1963 Constitution of the State of Michigan and of the policy directives of the Michigan State Board of Education and the Michigan Civil Rights Commission.

The Lansing Board of Education is a state body, and as such is directly subject to the requirements of the Fourteenth Amendment of the United States Constitution.

In Brown I, *supra*, the Supreme Court, looking "to the effect of segregation itself on public education," 347 U.S., at 492, found that "separate education facilities are inherently unequal," *Id.*, at 495, and, when sponsored by the state, are a violation of the Equal Protection Clause of the Fourteenth Amendment. *Id.* Where a constitutional violation has been committed, the Supreme Court said in Brown II, *supra*, school boards had a constitutional duty to desegregate "with all deliberate speed," 349 U.S., at 301.

Since the Board of Education had immediate control over all Lansing public elementary schools, and since the schools were in fact segregated, the Board could reasonably conclude, and in fact it did conclude, that it had a constitutional duty to enact a desegregation program. Since the Board was invested with immediate power to act, the conclusion would be the same whether or not the segregation was originally and exclusively the result of positive acts of the State. As Judge Damon Keith observed in Davis v. School District of Pontiac:

> "When the power to act is available, failure to take the necessary steps so as to negate or alleviate a situation which is harmful is as wrong as is the taking of affirmative steps to advance that situation. Sins of omission can be as serious as sins of commission." 309 F.Supp. 734, 741-742 (E.D. Mich. 1970).

In this respect, the case before the court is analogous to previous cases which have been before the Sixth Circuit Court

of Appeals. In Detroit, the Board of Education, on April 7, 1970, voluntarily adopted a plan establishing new high school attendance areas. Observing that implementation of the plan would result in an improved racial balance in the schools affected, the Sixth Circuit concluded that the plan was "the voluntary action of the Detroit Board of Education in its effort further to implement the mandate of the Supreme Court" in school desegregation decisions handed down since 1954. *Bradley v. Milliken*, 433 F.2d 897, 902 (6th Cir. 1970). Similarly, in Kalamazoo, the Board of Education, on May 7, 1971, adopted a plan for the redefinition of attendance areas designed to increase substantially racial integration in previously segregated schools. Noticing the similarity to *Bradley, supra*, this court found that Kalamazoo's integration plan was adopted for the purpose of protecting rights guaranteed by the Fourteenth Amendment. *Oliver, supra*, 346 F.Supp. at 780, 781.

In ruling on this preliminary injunction, this court does not have to decide, and does not decide, whether the Lansing Board of Education was under a constitutional obligation to adopt its desegregation plan on June 29, 1972, or whether the plan would meet that obligation if it did exist. *Bradley, supra*, 433 F.2d 904; *Oliver, supra*, 346 F.Supp. 779-780.

3. Nullification of the June 29, 1972 desegregation plan by the Lansing Board of Education would have the result of *resegregating* the schools involved in Clusters One and Two, and, as to all three clusters, would have the effect of impeding and frustrating the implementation of a plan adopted to protect the constitutional rights of minority students under the Fourteenth Amendment.

Absent a showing of massive population shifts since 1971-72, there can be no doubt that the abolition of Clusters One and Two would significantly increase racial concentration in the schools affected, relative to the 1972-73 school year, and return them to their formerly segregated state. It is obvious that aboli-

tion of these two clusters would frustrate the implementation of the Board's plan to protect constitutional rights.

Cluster Three, scheduled to be implemented at the start of the 1973-74 school year, was adopted to protect and advance the constitutional rights of minority students affected. Nullification of the June 29, 1972 plan would have the effect of impeding and frustrating this program to protect and advance the constitutional rights of the minority students involved. *Oliver, supra*, 346 F. Supp. at 780, 781.

4. Under the existing circumstances, the nullification of the June 29, 1972 desegregation plan by the Lansing Board of Education is unconstitutional state action to impede, delay, obstruct, and nullify a program lawfully adopted for the purpose of protecting rights guaranteed by the Fourteenth Amendment. *Bradley, supra*, 433 F.2d 902-903; *Oliver, supra*, 346 F. Supp., 780, 781, aff'd. 448 F.2d 635.

In *Bradley, supra*, the Detroit Board of Education adopted a plan designed to provide a better racial balance in the high schools. The legislature of the State of Michigan then passed a law the effect of which was to rescind or nullify the Detroit desegregation plan. Citing a number of Supreme Court and lower court decisions, the Sixth Circuit held the legislative act unconstitutional. The Court emphatically declared:

> "State action in any form, whether by statute, act of the executive department of a State or local government, or otherwise, will not be permitted to impede, delay or frustrate proceedings to protect the rights guaranteed to members of all races under the Fourteenth Amendment." 433 F.2d 902.

The Kalamazoo case involved a set of facts substantially similar to Bradley, except that it concerned the attempted nullification of a voluntarily adopted desegregation plan by the Kalamazoo School Board, instead of by the legislature. In granting

the motion for a preliminary injunction restraining the nullification, this court, relying on *Bradley*, found the attempted nullification to be unconstitutional state action which would impede the efforts of the Board to protect rights guaranteed by the Fourteenth Amendment, *Oliver, supra*, 346 F. Supp., 780, 781. This Court's decision to grant the preliminary injunction was upheld on appeal. *Oliver, supra*, 448 F.2d 635.

The significant facts in the present case relative to the nullification of the desegregation plan are virtually identical to those in the Kalamazoo case in all significant respects. As in *Kalamazoo*, the Lansing schools were formerly segregated and the Board of Education adopted a desegregation plan in order to protect what is reasonably believed to be the constitutional rights of minority students. As in Kalamazoo, the obvious effect of the nullification of the desegregation plan would be to impede and frustrate the protection of the constitutional rights of all the minority students affected by the program. The Kalamazoo case, as the present one, was at the preliminary injunction stage when this ruling was made.

5. On the basis of the foregoing findings and conclusions, the court has concluded that the grant of the preliminary injunction is appropriate in this case.

Giving effect to the Lansing Board of Education's February 1, 1973 resolutions nullifying the June 29, 1972 desegregation plan would irreparably harm the plaintiffs because it would deprive them of rights guaranteed by the Fourteenth Amendment of the United States Constitution and implemented by the anti-discrimination provision of the 1963 Constitution of the State of Michigan, Article VIII, Section 2. The rights of the plaintiffs and the members of their class are to be restored to their status prior to the adoption of the resolution of February 1, 1973, and these rights are to be preserved pending a full hearing on the merits, or further order of the court.

The plaintiffs have made a sufficient showing of a likelihood of success on the merits.

There is no agreement among the parties as to what the plaintiffs must prove in order to prevail on the merits. The plaintiffs contend that they need not establish de jure segregation in Lansing, but they have offered proof of several de jure acts in case they are wrong in this contention. The defendant contends that the plaintiffs must establish that it intentionally created and maintained a dual school system in order to be entitled to any remedy.

Assuming without deciding that the plaintiffs must ultimately prove de jure segregation in order to be entitled to a remedy, the court concludes that the evidence indicates that the probability that the Lansing Board of Education has engaged in acts of de jure segregation. Specifically, the defendant appears intentionally to have frozen Main Street School boundaries to contain Blacks in that school and to avoid integrating Verlinden School; to have operated a special transfer system with discriminatory effect; to have in the past engaged in discriminatory hiring practices; and intentionally to have assigned a disproportionate number of minority teachers to minority schools. This conclusion is consonant with *Keyes, supra.*

While this court has had to make some tentative assessments of the evidence for the purposes of ruling on the motion for a preliminary injunction, these assessments are not in the least ultimately dispositive of the issue of de jure segregation since all the evidence has not yet been submitted to the court.

Although each motion for a preliminary injunction must be carefully considered on its own merits, the court notes that many of the relevant facts and most of the applicable law in this case are very closely analogous to those in the Kalamazoo case, *Oliver, supra.* Since the Sixth Circuit affirmed this court's grant of a preliminary injunction in *Oliver, supra,* 448 F.2d 635, this court

has been especially attentive to the basic principles of *Oliver* in exercising its discretion in this case.

In granting the preliminary injunction in this case, the court emphasizes that the June 29, 1972 desegregation plan was wholly and voluntarily drawn up by the Lansing Board of Education and school authorities with local conditions exclusively in mind. Since the local Board is more familiar with Lansing than the court, this court has presumed, for the purposes of the preliminary injunction, that the plan was well suited to protect and advance the rights of minority students in the Lansing School District. Consequently, the preliminary injunction does not move a single step beyond what the local authorities originally promulgated, but seeks only to restrain the Board from irreparably harming the plaintiffs and the members of their class pending final decision on the merits.

It Is Therefore Ordered that the February 1, 1973 resolutions of the Lansing Board of Education reversing the Policy Statement on Equal Educational Opportunity and rescinding the desegregation plan of June 29, 1972, are unconstitutional, void and of no effect. The Board of Education, its agents and other persons acting in concert with them are hereby enjoined and restrained from giving any force or effect to these February 1, 1973 resolutions.

It Is Further Ordered that the June 29, 1972 Lansing Board of Education plan be reinstated and that its provisions be implemented at the appropriate times. Specifically, Cluster One, involving Main, Barnes, Elmhurst and Lewton Elementary Schools, and Cluster Two, involving Maple Hill, Michigan, Cavanaugh and Everett Elementary Schools, are to be implemented during the 1973-74 school year and thereafter as ordered, just as they were during the 1972-73 school year. Cluster Three, involving Cedar, Grand River, Oak Park, Post Oak, and High Elementary Schools, is to be implemented at the be-

ginning of the 1973-74 school year, and thereafter as ordered, just as originally scheduled in the June 29, 1972 plan. The Board is enjoined to take all steps necessary to ensure that Clusters One, Two and Three will go into operation at the beginning of the 1973-74 school year. The Board is also enjoined to implement the various subsidiary aspects of the June 29, 1972 plan, as they relate to the operation of Clusters One, Two, and Three.

It Is Further Ordered that the Lansing Board of Education make immediate inquiries to the appropriate agencies of the United States Government to determine whether federal funds are or may be available to assist the Lansing School District in implementing the order of this court. If any such funds are or may be available, the Board is ordered to prepare the necessary applications as quickly as possible and to submit them as soon as possible.

It Is Further Ordered that the Board carry out all aspects of the order of this court in good faith.

It Is Further Ordered that this order shall take effect immediately, and shall remain in effect until the further order of this court, or until a final resolution of this cause on the merits.
Dated: August 10, 1973.

Noel P. Fox
Chief District Judge

OPINION OF THE COURT

(U.S. Court of Appeals—Sixth Circuit)

(Filed October 3, 1973)

No. 73-8119

National Association for the Advancement of Colored People, Lansing Branch, et al.,
Plaintiffs-Appellees,
v.
Lansing Board of Education, a Body Corporate, et al.,
Defendants-Appellants.

Appeal from the United States District Court for the Western District of Michigan.

Before: Phillips, Chief Judge, Peck and Lively, Circuit Judges.

Per Curiam. This case is before the Court on an emergency application for stay pending appeal of an order of the District Court granting a preliminary injunction in a school desegregation case. The injunction directs the Board of Education of Lansing, Michigan to reinstate a desegregation plan adopted by that Board on June 19, 1972. Schools in Lansing tentatively are scheduled to commence on September 6, 1973.

The record shows that as early as 1964, the Lansing Board of Education became concerned because certain elementary schools in that system were in process of becoming segregated. During the ensuing years certain study groups and ad hoc committees were appointed to study the problem and to make reports to the Board of Education. These reports are summarized in some detail in the preliminary injunction issued by District Judge

Noel P. Fox in the present case. Based in part on the reports of such studies and after numerous public hearings and extensive public debate, the Lansing Board of Education on June 19, 1972, adopted a desegregation plan, commonly known as the "Cluster Plan", involving students in grades 3 through 6 in 13 of Lansing's 50 elementary schools. This plan does not involve high schools or junior high schools.

The "Cluster Plan" met with public opposition resulting in a recall election directed against the five members of Education who supported it. All five members of the Board who voted for the "Cluster Plan" were recalled.

Five new Board members were elected in January, 1973. At the first regularly scheduled meeting of the Board as reconstituted, the "Cluster Plan" was rescinded effective at the end of the 1972-73 school year. The District Court found that this rescission would have the effect of reassigning many Lansing elementary students back to their previously segregated schools.

It is the established rule of this Circuit that the granting or denial of a preliminary injunction will not be disturbed on appeal unless contrary to some rule of equity or the result of improvident exercise of judicial discretion. *Oliver v. School District of City of Kalamazoo*, 448 F.2d 635 (6th Cir. 1971) and cases therein cited.

In a somewhat analogous situation which arose in a school desegregation case involving the public schools of Detroit, this Court held that District Judge Stephen J. Roth did not abuse his discretion in denying an application for a preliminary injunction. *Bradley v. Milliken*, 433 F.2d 897, 904 (6th Cir. 1970). This Court has upheld the determinations of District Courts in school desegregation cases, as well as other cases, when properly supported by the pleadings and evidence, even though different results may be reached in different cases. See, *Goss v. Board of Education*, — F.2d — (6th Cir. (*en banc*) July 18, 1973).

We hold that the District Judge did not abuse his discretion in granting the injunction on the record in the present case.

The Board of Education further urges the granting of a stay on the authority of the "Broomfield Amendment," Public Law 92-318, 86 Stat. 235, §803, known as the "Education Amendments Act of 1972." We hold that this statute has no application in the present case. See, *Drummond v. Acree*, 409 U.S. 1228, 93 S. Ct. 18 (1972).

This case is beofre this Court on appeal, the notice of appeal having been filed August 14, 1973. The order of the District Court granting the preliminary injunction is an appealable order. (28 U.S.C. §1292(a)). The emergency application for stay pending appeal is denied. Further, this Court concludes that it is manifest that the questions on which the decision of this case depends do not require further argument. Rule 8, Sixth Circuit Rules. *See, Keyes v. School District 1*, — U.S. —, 41 U.S.L.W. 5002 (July 21, 1973); *Bradley v. Milliken*, —F.2d — (6th Cir. (*en banc*) June 12, 1973); *Mapp v. Board of Education of Chattanooga*, 477 F.2d 851 (6th Cir. (*en banc*) April 30, 1973); *Davis v. School District of City of Pontiac*, 433 F.2 573 (6th Cir.), *cert. denied*, 404 U.S. 913 (1971).

Either following the plenary hearing on the merits or before the plenary hearing, the District Judge specifically is authorized to make such modifications in the plan implemented by the interlocutory injunction as he may find to be appropriate. *Kelly v. Metropolitan Board of Education of Nashville*, 463 F.2d 732 (6th Cir. 1972), *cert. denied*, 409 U.S. 1001; *Oliver v. School District of City of Kalamazoo, supra*, 448 F.2d at 636.

Affirmed.

OPINION

(U. S. District Court—Western District of Michigan—
Southern Division)

(National Association for the Advancement of Colored People, etc., Et Al., Plaintiffs,

vs.

Lansing Board of Education, Etc., Et Al., Defendants)

(Filed December 19, 1975)

This school desegregation suit was commenced in 1972 to determine whether the Lansing Board of Education violated the constitutional rights of the district's schoolchildren by denying them equal educational opportunity on the basis of race.

The court recognizes that the issues involved are of particular interest and vital significance to all Lansing area citizens. Therefore, this opinion is aimed at communicating the factual and legal bases for the court's decision, not only to the parties and reviewing courts, but also to the community. For it is the hope of the court that a sincere civic involvement in implementing the terms of this decision will help improve the school system and strengthen the community, for citizens of all races, and for their children.

The jurisdiction of this court is properly invoked under 28 USC Sections 1331(a), 1343(3), and (4), this being a suit in equity authorized by 42 USC Sections 1983, 1988 and 2000d. Jurisdiction is also invoked under 42 USC Section 1981 and further invoked under 28 USC Sections 2201 and 2202, this being a suit seeking a declaration that the February 1, 1973

resolutions of the Lansing Board of Education are unconstitutional, and seeking also other relief.

Individual plaintiffs are children or parents of children who, as a result of the June 29, 1972 desegregation plan adopted by the Lansing Board of Education, attend desegregated schools. Plaintiff, National Association for the Advancement of Colored People, Lansing Branch, is an unincorporated association which sues on behalf of its membership who are members of the plaintiff class. Plaintiffs are bringing this action on their own behalf and on behalf of all persons in the City of Lansing similarly situated. The class action is proper under Fed. R. Civ. P. 23. Because of the notoriety of the case in Lansing, the members of the plaintiffs' class have adequate notice.

The original and supplemental complaints alleged that actions of the Lansing Board of Education, especially the rescission of the June 29, 1972 desegregation plan (by its resolutions of February 1, 1973), were purposely taken to achieve segregative effects, in violation of the Thirteenth and Fourteenth Amendments to the United States Constitution, and the Michigan Constitution. Plaintiffs' allegations that defendant has violated Michigan's State Constitution may properly be entertained by this court under the doctrine of pendent jurisdiction.

Following a full evidentiary hearing, the court issued a preliminary injunction on August 10, 1973, restraining the defendant Board of Education from implementing certain of its resolutions of February 1, 1973. The implementation of these resolutions would have effectively revised the Board's formal Policy Statement on Equal Educational Opportunity and would have nullified the desegregation plan which was voluntarily adopted by the Board on June 29, 1972 and partially implemented by it beginning in September 1972. The issues presently before the court are whether this preliminary relief should be made per-

manent, and whether school board officials are responsible for segregative conditions in the Lansing school system requiring further remedial action.

I

The essence of plaintiffs' complaint in this case is an allegation of constitutional violations involving an inequity or inequality in public education deliberately created, maintained, and perpetuated by school officials. For reasons discussed in detail throughout this opinion, the court finds that the Lansing elementary schools[1] have in fact been racially segregated and that these segregative conditions are being perpetuated even now. The court finds as a matter of demonstrable fact and established law that this condition of segregation resulted in inequitable and unequal educational opportunities for Black and White students. Educational inequity is a necessary consequence of racial discrimination in and separation of the schools. The reasons which explain this fact are complex, being intricately rooted in the tortured history of race relations of this nation. Over the years, Black experience has been unique in American history. No other racial or ethnic minority was systemmatically enslaved by the White majority. Rather than having suffered the temporary discomfort and annoyance of social ostracism common to first-generation European ethnic groups, Blacks for hundreds of years were subjected to legally and socially institutionalized economic, spiritual, psychological, social and educational deprivation.

It is appropriate to note Gunnar Myrdal's observation on slavery in his classic, An American Dilemma, in his chapter on "Inequality of Justice:"

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[1] Lansing secondary schools were not made an issue in this case, since they were integrated in 1966 pursuant to a plan adopted by the Board of Education. The Board successfully defended this plan in litigation brought against it. Jipping, et al. v. Lansing School District, 15 Mich. App. 441 (1968), leave to appeal denied by Supreme Court of Michigan, 382 Mich. 760 (1969).

"Under slavery the Negro was owned, bought, and sold as property; he was worked, housed, fed, and prevented from doing what he wished if it was contrary to the interests of his master. In general, the Negro slave had no 'rights' which his owner was bound to respect. Even if in legal theory the slave was given the status of a person under the law as well as the status of property, it was the latter viewpoint which, in practice, became the determining one. In the very relationship between master and slave it was inherent that—without recourse to courts—force and bodily punishment and, under certain circumstances, even the killing of the slave was allowed. '. . . (A)ll slaveholders are under the shield of a perpetual license to murder,' exclaimed Hinton R. Helper in his unsparing onslought on the plantation class and the slavery institution. Thomas Jefferson saw clearly the moral danger of the slavery institution:

> 'The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this, and learn to imitate it. . . . The man must be a prodigy who can retain his manners and morals undepraved by such circumstances. *And with what execration should the statesman be loaded, who,* permitting one half the citizens to trample on the rights of the other, *transforming those into despots, and these into enemies, destroys the morals of one part, and the amor patriae of the other.* . . . [Can] the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that *these liberties are the gift of God?* That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just;

that His justice cannot sleep forever.' "[2] (Emphasis supplied.)

Unfortunately, White attitudes originally attendant to the institution of slavery persisted after the adoption of the Thirteenth Amendment. Although legal slavery died, Americans created, during the four decades after the Civil War, a new legal and social pattern of discrimination based upon race. Many of these forms of institutionalized repression have persisted to the present, with the result that Black Americans are often denied the equality to which they are entitled in our constitutional democratic republic.

Inextricably intertwined with the dominating inescapable heritage of slavery and all its attendant dehumanizing ramifications, every aspect of the human condition of many Black people in America today is almost irremediably repressed. These continuing inhuman conditions of uncivilized servitude and inferior status have become known as vestiges of slavery.

The effects of this historical status of subservience and formalized inferiority continue to be pervasive. Past barriers to personal fulfillment and attainment cannot reasonably be minimized in assessing current impediments to equal opportunity. In the context of past officially sanctioned and present subtly insidious and invidious private and public racial discrimination against Black people as a class, a school environment which for whatever reason involves marked, disproportionate racial concentration inherently generates acute consciousness of race. As situated in segregated surroundings, this inflated consciousness triggers artificial, unrealistic personal reactions based on misconceived but, in view of historical predicates, *understandable individual perceptions of the significance of racial differences*.

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[2] At 530-531 (1944).

Although disproportionate racial concentration of Black children in the schools might not have adverse consequences in all times and places, it certainly does in the context of the present forms of social organization, which are conditioned by legacy of slavery. One of the adverse effects of racial segregation is in the area of individual achievement.

Segregated Black children tend to infer that they are isolated from the White majority because of their race, and, drawing on their observations of the deprivations experienced by Black adults, they also tend to infer that their own potential is limited because of their race. It is not surprising that Black children have evidenced reduced self-esteem in a segregated environment and concomitant diminished motivation to succeed. The culturally-induced lack of self-esteem and diminished motivation in turn operate to measurably reduce achievement.

Individual growth in the educational system occurs not only in the area of achievement, the acquisition of cognitive skills, but also in the areas of social and psychological development. Segregation is perhaps more detrimental to the Black student's social and psychological development than to his achievement level. Finding himself isolated to a significant degree from the bulk of the White population, witnessing the disparate superiority of the status of White adults over Black adults in many circumstances, and perhaps further observing a pronounced underrepresentation of Blacks in positions of leadership in his school, where this is the case, the Black child may become reluctant to assert himself in the presence of Whites and unduly pessimistic concerning his ability to interact or compete successfully with Whites of his own generation.[3]

Teacher reaction to segregated educational circumstances frequently operates to the disadvantage of students. Dubbed by

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[3] 1 U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 114 (1967).

some researchers as a kind of "self-fulfilling prophecy," the impact on Black students of teacher expectations based on race has been demonstrated by several studies. Affected by racial stereotypes as well as by actual patterns of disparate Black-White performance levels in the general society, teachers may tend to "teach down" to Black children, expecting and therefore eliciting low levels of performance.

The negative impact of racially segregated schools is not confined exclusively to Black students. White students may also react to racial isolation in ways harmful to themselves. White pupils are apt to form an irrational attitude of *inherent superiority and are apt to develop an unrealistic concept of homogeneous society in which certain values enjoy universal acceptance*. Similarly, because of their cultural isolation, segregated White children tend to *lose sight of those fundamental values of our constitutional system which, while respecting individual differences, favor free access and wide social mobility to all persons regardless of race, creed, or national origin, and which thereby promote a healthy interchange among persons of different backgrounds.*

The state of mind fostered by racial and cultural isolation heightens racial conflicts and divisiveness in the country and thus adversely affects the domestic tranquility the Constitution was designed to promote. White students who have been educated in segregated public schools are thus ill-prepared to deal with the pluralistic society which actually exists in the adult world beyond the classroom.

In part because of segregated schools, as Charles E. Silberman has written:

> "[T]he public schools are failing dismally in what has always been regarded as one of their primary tasks—in Horace Mann's phrase, to be *'the great equalizer of the conditions of men,'* facilitating the movement of the poor and disadvantaged into the mainstream of American economic and social life. Far from being 'the great equalizer,' the schools help perpetuate the differences in conditions, or at the very least, do little to reduce them. *If the United States is to become a truly just and humane society, the schools will have to do an incomparably better job than they are now doing of educating youngsters from minority-group and lower-class homes.*"[4] (Emphasis supplied.)

The subject of race in America and the consequences of racial segregation in the schools might be explored at much greater length. However, it clearly appears that in the context of modern America, segregated education is detrimental to both Black and White students, creating specially for Black students, psychological and social difficulties which have a substantial adverse impact on overall individual development. Segregated education plainly denies equal educational opportunity.

The findings made by the court in this case parallel those made by the United States Supreme Court in Brown v. Board of Education, 347 U.S. 483, 98 L.Ed. 873, 74 S.Ct. 686 (1954) [Brown I]. In addressing the precise issue of the effect of racial separation on grade and high school students the Supreme Court in Brown quoted with approval language from the District Court as follows:

> " 'Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is *greater* when it has the sanction of law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to (retard) the educational and mental development of ne-

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[4] Quoted in Senate Select Committee on Equal Educational Opportunity, Toward Equal Educational Opportunity, Sen. Rep. No. 92-000, 92nd Cong., 2d Sess., Part III. Inequity in Education 95 (1972).

gro children and to deprive them of some of the benefits they would receive in a racially integrated school system." 347 U.S. at 494. (Emphasis supplied.)

Although much may be said about the fact that Brown involved obvious and conspicuous state action separating Blacks and Whites by statute, with respect to the simple issue of whether racial separation fundamentally poses a situation of inequity, Brown was and is unequivocal. "Separate educational facilities are inherently unequal." 347 U.S. at 495.

II

The Fourteenth Amendment of the United States Constitution declares, "No state *shall* . . . *deny* to any person within its jurisdiction equal protection of the laws."[5] The law is clear that official action at any hierarchial level which denies the plaintiffs equal protection of the laws is unconstitutional. Ex parte Virginia, 100 U.S. 339, 346-347 (1880). It is established that "under the Constitution and laws of Michigan, the public school system is a State function and that local school districts are instrumentalities of the State created for administrative convenience."[6] Members of local school boards as well as members of the State Board of Education and the Superintendent of Public Instruction are State officers, agents of the State in every official respect.

Before entering upon the duties of their respective offices, all are required by the Michigan Constitution of 1963, Art. II,

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[5] Pertinent excerpts from Supreme Court cases interpreting the Fourteenth Amendment are included in Appendices. App. A.

[6] Bradley v. Milliken, 484 F.2d 215 (6th Cir., 1973) (en banc). The analysis of State law concerning education in Michigan at 245-249, is adopted and incorporated by reference for the purposes of this opinion. App. B.

Sec. 1, to take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of . . . according to the best of my ability." Each officer thus undertakes a personal and official responsibility to abide by the Constitution of the United States and of Michigan.

The principal issue in this case is whether the defendant State officers have denied the plaintiffs equal protection of the laws.

The Fifth Circuit, which has a vast experience with school desegregation cases, recently rejected "the anodyne dichotomy of classical de facto and de jure segregation." Cisernos v. Corpus Christi Independent School District, 467 F.2d 142, 148 (1972). That court held that a finding of unlawful segregation would be supported by two distinct factual determinations. "First, a denial of equal educational opportunity must be found to exist, defined as racial or ethnic segregation. Secondly, this segregation must be the result of state action." While the specific quantity of state action and the severity of the segregation necessary to sustain a constitutional violation was left to be dealt with on a case by case basis, the court noted that, as a general rule, it "need only find a real and significant relationship, in terms of cause and effect, between state action and the denial of educational opportunity occasioned by the racial and ethnic separation of public school students." Id. See Appendix C.

However, the Supreme Court, in Keyes v. School District No. 1, 413 U.S. 189 (1973), *assumed* for the purposes of that case that a finding of de jure segregation was required to support a finding of a constitutional violation. This court follows the Supreme Court for the purposes of the present case, and, like the Supreme Court, leaves for further adjudication in other cases the question of whether something other than de jure

segregation constitute a violation of the Fourteenth Amendment.

As a first step toward resolving this issue, the court has had to ascertain the legal standards to be applied to determine whether the defendants have been guilty of de jure segregation.[7] Although not as fully refined as the common law torts, the major legal elements and conditioning factors of the constitutional tort of de jure segregation[8] are reasonably clear.

> "A finding of de jure segregation requires a showing of three elements: (1) action or inaction by public officials (2) with a segregative purpose (3) which actually results in increased or continued segregation in the public schools." Oliver, supra, footnote . . ., 508 F.2d at 182.

Ascertaining the Board's intentions is certainly difficult, but it is not at all impossible. The starting place is the standards and processes evolved by the common law for determining the relevant state of mind of the defendant, or defendants, in an intentional tort suit. The Supreme Court and the Sixth Circuit Court of Appeals have said that one of the Congressional statutes relied upon by the plaintiffs in this case, 42 USC Section 1983, should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions. Monroe v. Pape, 365 U.S. 167, 187, 81 S.Ct. 473, 484, 5 L.Ed. 2d 492 (1961); Pierson v. Ray, 386 U.S. 547, 556, 87 S.Ct. 1213, 1219, 18 L.Ed.2d 288 (1967); Puckett v. Cox, 456 F.2d 233, 235 (6th Cir. 1972); see

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[7] The analysis of this court in this regard closely parallels its previous treatment of the issue in Oliver v. Kalamazoo Board of Education, 368 F.Supp. 143 (1973); aff'd. sub. nom. Oliver v. Michigan State Board of Education, 508 F.2d 178 (1974), cert. denied 421 U.S. 963 (1975).

[8] While the substantive requirements of the constitutional tort are derived from the Fourteenth Amendment and to a lesser extent from various implementation of statutes, this court has jurisdiction by virtue of several jurisdictional statutes passed by Congress.

Fritzke v. Shappell, 468 F.2d 1072 (6th Cir. 1972). In general, it is reasonable to infer that people intend the natural and probable consequences of acts knowingly done or knowingly omitted. Thus, in a case tried to a jury, it would be proper to instruct that:

> "In the absence of evidence in the case which leads the jury to a different or contrary conclusion, you may draw the inference and find that any person involved intended such natural and probable consequences as one standing in like circumstances, and possessing like knowledge, should reasonably have expected to result from any act knowingly done, or knowingly omitted by such person. An act, or failure to act, is knowingly done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason."[9]

Since intent may be proved by direct, indirect or circumstantial evidence, all the facts and circumstances in evidence in the case which may aid in the determination of state of mind may be considered.[10]

In the recent case of Bronson v. Board of Education, No. 75-1244, September 24, 1975, the Sixth Circuit confirmed the course set in Oliver and further elucidated the meaning of the intent requirement.

> "In Keyes, the Court emphasized that the 'differentiating factor between *de jure* and so-called *de facto* segregation . . . is *purpose* or *intent* to segregate.' 413 U.S. at 208 (emphasis in original) . . . (T)he Supreme Court appears

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[9] 2. Devitt and Blackmar, Federal Jury Practice and Instructions, note 16 at Sec. 74.03. The term "other innocent reason" at the end of the final sentence refers in this context not to defenses in the area of causation or to such affirmative defenses as consent or self-defense, but rather refers to matters analogous to mistake or accident which would tend to negate knowledge or affirmative purpose.

[10] Id.

to have held that intent is synonymous with purpose in determining whether a racial imbalance which is found to exist in a school system that was never segregated by state law results in a constitutional violation. In a school system which was previously segregated by the state law there is no requirement that intent be shown. The state action requirement of the Fourteenth Amendment is not on issue. On the other hand, in a school system which has never been operated under a state requirement of separation of the races, *de facto* segregation may only be treated as resulting from state action in violation of the Fourteenth Amendment if it is shown to result from intentional acts, omission or policies of public officials or public bodies . . .

"(A) court may infer intent, which is a subjective fact not easily proven, from evidence of racial imbalance accompanied by acts or omissions of a school board, the natural and probable result of which is to produce or perpetuate a segregated school system." (Citing Oliver, supra, and Berry v. Benton Harbor School District, 505 F.2d 238 (1975)). Bronson, slip opinion, pp. 7-8.

Under Keyes, in an intentional case, to be guilty of a constitutional violation, the state and/or local authorities must have in fact caused or maintained the segregated conditions which are complained of. Under this theory, it is a complete defense that the authorities have not at all caused or maintained these conditions. Similarly, the defendants will not be held legally responsible if they have only occasionally committed segregative acts and these acts are of trivial importance and bear no significant relation to the modern situation.

Rather, the standard must be that the defendants to a substantial degree contributed to the creation or maintenance of segregated schooling in Lansing. In a tort case, it would be proper to instruct the jury on the issue of proximate cause as follows: "An injury or damage is proximately caused by an act

or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission."[11]

It is useful to note, as the Sixth Circuit did in Oliver, supra, at 182-183, that "(w)hen constitutional rights are involved, the issue is seldom whether public officials have acted with evil motives or whether they have consciously plotted with bigotry in their hearts to deprive citizens of the equal protection of the laws. Rather, under the test for de jure segregation, the question is whether a purposeful pattern of segregation has manifested itself over time, despite the fact that individual official actions, considered alone, may not have been taken for segregative purposes and may not have been in themselves constitutionally invalid. Davis v. School District of Pontiac, 443 F.2d 573, 576 (6th Cir., cert. denied, 404 U.S. 913 (1971)). Benevolence of motives does not excuse segregative acts. As the Supreme Court stated in Wright v. Council of City of Emporia, 407 U.S. 451, 461 (1972), 'The "dominant purpose" test finds no precedent in our decisions . . . The existence of a permissible purpose cannot sustain an action that has an impermissible effect.' "

In a similar vein, the Second Circuit has observed:

". . . (W)e believe that a finding of de jure segregation may be based on actions taken coupled with omissions made, by governmental authorities which have the natural and foreseeable consequences of causing educational segregation. * * *

"To say that the foreseeable must be shown to have been actually foreseen would invite a standard almost im-

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[11] 2 Devitt and Blackmar, supra, Sec. 73.18 (2d ed. 1970). Of course, there might be more than one "proximate cause." See proposed jury instruction, Id. at Sec. 73.19.

possible of proof save by admissions. When we consider the motivation of people constituting a school board, the task would be even harder, for we are dealing with a collective will. It is difficult enough to find the collective mind of a group of legislators. See Palmer v. Thompson, 403 U.S. 217, 224-25 (1971); and see Keyes v. School District No. 1, supra, 413 U.S. at 233-34 (Powell, J., concurring). It is even harder to find the motivation of local citizens, many of whom *would be as reluctant to admit that they have racial prejudice as to admit that they have no sense of humor.*

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"Speaking in de jure terms does not require us then, to *limit the state activity which effectively spells segregation only to acts which are probably motivated by a desire to discriminate.* • • • Aside from the difficulties of ferreting out a collective motive and conversely the injustice of ascribing collective will to articulate remarks of particular bigots, *the nature of 'state action' takes its quality from its foreseeable effect. The Fourteenth Amendment is not meant to assess blame but prevent injustice.*" (Emphasis supplied.) Hart v. Community School Board of Education, N.Y. School Dist. No. 21, 512 F.2d 37 (2nd Cir. 1975), cited in U.S. v. School District of Omaha, No. 74-1964, 74-1993 (8th Cir., filed June 12, 1975).

Cf. Oliver, supra.

In order to fairly assess the alleged actions and inactions of the defendants, and to determine what the foreseeable consequences of these acts and omissions were, it is necessary to consider the conditions existing when they occurred. To this end, the court has carefully evaluated all of the voluminous testimony and numerous exhibits put into evidence in this case since it began.

For purposes of this opinion, the court need comprehensively review only those developments in Lansing public education which have taken place since the middle 1950's, with special attention to the elementary schools. The most significant developments have involved the growth of a pronounced racial concentration in some West Side elementary schools, the growth of a pronounced ethnic concentration in the north-central section of the city, and the varied responses of the Lansing Board of Education to these disturbing situations.

In particular the court has focused its attention on a number of acts and policies of the school board said by the plaintiffs to be evidence of de jure segregation. Chief among these are the rescission of the "cluster plan" for desegregating elementary schools, adopted by the Board on June 29, 1972, and the location and intended use of the new Vivian Riddle Elementary School, which is presently under construction. Other policies scrutinized by the court include those relating to mobile units, medical transfers, attendance boundaries, faculty hiring and assignment, physical facilities, and racial integration efforts involving transportation primarily of black children.

The Supreme Court in Keyes, supra, at 196, stated: "What is or is not a segregated school will necessarily depend on the facts of each particular case. In addition to the racial and ethnic composition of a school's student body other factors such as the racial and ethnic composition of the faculty and staff and the community and administration attitudes toward the school must be taken into consideration." Previously the Court wrote:

> "In Green [Green v. County School Board, 391 U.S. 431, 20 L.Ed.2d 716, 88 S.Ct. 1689 (1968)], we pointed out that existing policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities were among the most important indicia of a segregated system. 391 U.S., at 435. Independent of student assign-

ment, where it is possible to identify a 'white school' or a 'Negro school' simply by reference to the racial composition of teachers and staff, the quality of school buildings and equipment, or the organization of sports activities, a *prima facie* case of violation of substantive constitutional rights under the Equal Protection Clause is shown."

Based on the extensive evidence adduced at the preliminary injunction hearing, the court ruled before trial that such a prima facie showing had been made in this case, and that defendants would therefore carry the burden of going forward at trial. This shifting of the burden upon a presentation of a prima facie case is commonplace judicial procedure, and its application in school desegregation cases is not novel.[12]

A presumption of segregative intent arises when plaintiffs establish that the natural, probable and foreseeable result of public officials action or inaction was an increase or perpetuation of public school segregation. The presumption becomes proof unless defendants affirmatively establish that their action or inaction was a consistent and resolute application of racially neutral policies. Oliver, supra, 508 F.2d at 182; Keyes, supra; Bradley v. Milliken, 484 F.2d 215 (6th Cir. 1973) (en banc), rev'd on other grounds, 418 U.S. 717 (1974); Davis v. School District of Pontiac, 443 F.2d 573 (6th Cir. 1971), aff'g. 309 F.Supp. 734 (E.D. Mich. 1970).

The plaintiffs early in these proceedings established a prima facie case that the defendants maintained policies and were responsible for acts and omissions which did have the natural foreseeable, probable and actual effects of contributing to and continuing segregative conditions in Lansing elementary schools. Defendants have argued that the racial imbalance in Lansing elementary schools, and many of the acts and omissions plaintiffs complain of, are the result of a neighborhood school policy, consistently administered without regard to race.

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12 "This burden-shifting principle is not new or novel. There are no hard-and-fast standards governing allocation of the burden of proof in every situation. The issue, rather, 'is merely a question of policy and fairness based on experience in the different situations.' 9 J. Wigmore, Evidence §2486, at 275 (3d ed 1940). In the context of racial segregation in public education, the courts, including this court, have recognized a variety of situations in which 'fairness' and 'policy' require state authorities to bear the burden of explaining actions or conditions which appear to be racially motivated. (Citation of cases omitted.)" Keyes, supra, 413 U.S. at 209.

However, the Supreme Court has made clear that facially neutral practices, even those neutral in terms of "intent," may be illegally discriminatory in effect. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 28 (1971); Griggs v. Duke Power Co., 401 U.S. 424, 430 (1971). Thus, this court has analyzed the evidence in this case to determine the foreseeable effects of the defendants' actions, as well as their motivations.

III

This court finds the following facts and circumstances.

The Lansing School District was organized in 1847 by the merger of three districts serving "upper, middle, and lower" towns in what was to become the City of Lansing. The City of Lansing and the school district expanded slowly and in 1949 had an area of about 11 square miles.

Between 1958 and 1965 the Lansing School District grew rapidly, as part or all of 12 neighboring school districts were annexed. The size of the District increased so that presently it is approximately 50 square miles, much larger than the city proper.

The Black population of Lansing likewise grew in the '50's, though not quite as dramatically. In 1950, Black people in Lansing numbered only 2,979 out of a total population of 92,129, or a little over 3%. By 1960, the proportion had

changed to 6,745 Blacks out of a total of 107,807, or slightly over 6%.

Most Blacks lived on the West Side of Lansing, in the southern part of what is commonly known as the "River Island area."[13] Following a familiar demographic pattern, Black people in the 1950's moved into previously white neighborhoods in the West Side section, and the racial composition of elementary schools changed accordingly.

Attendance Zone Boundaries

One such school which was affected in this fashion was Main Street. In September 1956, the school was slightly overcrowded and 62% Black. At that time, the overcrowding was eliminated and the proportion of Blacks was reduced to 55% by an adjustment of boundaries which took a two-block area from the Main attendance zone and gave students living in that area the option of attending either Kalamazoo or Lincoln school.[14] However, Blacks continued to move into the Main Street School service area, and the number of Blacks in the school continued to increase.

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[13] The term "River Island area" is used interchangeably in this opinion with "the West Side" to denote the area bounded on three sides by the Grand River and on the west side by the city limits and school district boundary. The name "River Island" was coined by a school administrator seeking to avoid untoward connotations from "West Side Story." It is by no means an island; geographically isolated from other parts of the school district. To the contrary, it comprises the city's Central Business District and the state Capitol, and is readily accessible from all other parts of the city. The parties have not suggested that it is a "separate, identifiable, and unrelated section of the school district," Keyes v. School District No. 1, 413 U.S. at 205, and the court finds on the evidence that it is not. On the basis of its examination of maps, verbal testimony and census and other demographic data, this court finds that Lansing School District, for purposes of this case, is to be treated as a single, undivided district.

[14] "Boundary Changes, 1947-76," Def. Ex. 84.

The Board of Education said it "considered that the trend of an increasing ratio of Negro to White enrollment at the Main Street School could develop into complete segregation, a situation not conducive to satisfactory race relations."[15] In 1957, confessing that its original attempt to reverse this trend toward a segregated school had failed, the Board appointed a committee in response to a request by parents, to analyze the conditions and recommend corrective measures. Among other things this committee suggested an additional boundary change, or, alternatively, the immediate construction of an elementary school in the Heatherwood area to the northwest of Main Street School. The Board rejected the proposed boundary change for the reason discussed below. The Board also refused to construct a new elementary school since this would, in its view, require the vacating of satisfactory facilities and postpone the construction of new schools badly needed elsewhere. Finally concluding that the increased Black enrollment at Main was the result of Blacks moving into the service area, the Board resolved to abandon further efforts to keep Main integrated, and further resolved to maintain equal educational opportunity through a variety of special programs.[16]

The stated reason for the Board's refusal to change boundaries as its committee recommended was that such alterations "cannot accomplish any material results unless some children travel unreasonably long distances, in some cases completely across a school district and into the district of a distant school."[17]

Re-examination of this statement in light of the geographical realities is revealing. The school district which students would have had to go "completely across" to get into the "distant" district was a two-block wide strip of the Michigan service area

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[15] Lansing Board of Education, Minutes, March 28, 1957, Pl. Ex. 12.

[16] Id.

[17] Id.

which extends between Verlinden and Main, and is the site of Sexton High School. Of course, any students switched from the Verlinden to the Main area would have had to walk more than two blocks to actually get to school, but the map clearly shows that over one-third of the Verlinden service area is within a mile of the Main Street schoolhouse door. (Def. Ex. 82.) Lansing School District's policy is that students are close enough to walk to school unless they live over a mile and a half from school.

Indeed, a request that same year from White Main Street parents who wanted the board to change boundaries so their children could go to White Verlinden School instead of Black Main Street School, shows that parents did not consider the distance unreasonably great. It also shows that they did not consider the high school campus a barrier to their access to the elementary school on the far side of it.[18]

This request by White parents that the boundary lines be gerrymandered to allow their children to go to the White Verlinden School was presented to the Board at about the same time as a related request by Black parents that the Board change boundaries to reduce concentration of Black students at Main. The Board asked representatives of Blacks and Whites to work together to resolve their differences, and after a less than cooperative beginning, they finally did so.[19] As noted above, no boundary changes were made by the Board at that time in response to these requests. In fact, since 1957, the Board has never altered the boundaries of the Main Street School service area,[20] although the 1966 Citizens' Advisory Committee recommended that boundary changes might be appropriate.[21]

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[18] The court also observes from the maps in evidence that there are routes on regular city streets between the two service areas, which do not cut through the high school grounds, and which would appear to be the most natural way to traverse the area.

[19] Testimony of Clarence Rosa, Tr. 65-66.

[20] Def. Ex. 84; Additional Stipulations, No. 4.

[21] Pl. Ex. 5, p. 10.

The Board's prediction about the trend toward complete segregation was borne out, as Main Street eventually became over 90% Black.[22]

In September 1957, the Board altered the boundary lines among Michigan and Verlinden and Kalamazoo by removing three blocks (two of which were residential) from Michigan and making them part of Verlinden, and transferring roughly the same size area from Kalamazoo to Michigan. The area transferred from Michigan to Verlinden was all-White; there were no minority residents living there at the time.[23]

The reason for the alteration is not entirely clear—it was stipulated that if Lansing School District Information Services Director John Maars had testified, he would have stated that it was overcrowding at Kalamazoo Street School. Exhibit 84, "Boundary Changes," prepared by the school administration at the court's request, indicates that the reason was "to balance enrollments" among Michigan, Verlinden, and Kalamazoo. The difference in the choice of terms appears to have some significance, since Exhibit 84, which outlines and states reasons for all boundary changes in the district since 1948, distinguishes between changes to relieve overcrowding, and changes to balance enrollments. Indeed, it appears from looking at the whole transaction that if one of these three schools whose enrollments were balanced was overcrowded, it was Kalamazoo. This, because while Michigan gave up area to Verlinden, it simultaneously took on territory from Kalamazoo.

The view from the perspective of the Michigan Street School alone is puzzling, if not suggestive. Michigan had a capacity larger than the other schools involved.[24] For the year 1957-58,

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[22] Testimony of William L. Webb, Tr. 146.

[23] Stipulation in open court, 10-20-75; Answer to Interrogatory 1(b)(2).

[24] "1968 Facility Planning Study." Pl. Ex. 38; Def. Ex. 82.

and for a number of years before and after that, Michigan's enrollment was significantly below capacity. Yet in 1957 the Board removed an all-White area from this school zone to already White Verlinden, with no apparent net change in the total size of the Michigan service area. (Michigan and Verlinden schools are about equi-distant from the area in question; Michigan is slightly closer.)

The Verlinden service area at this time had almost no Blacks. In 1950 it was virtually all White, and by 1960, it was still nearly 99% White. (Def. Ex. 24A, B.) The Michigan service area on the other hand, was overwhelmingly White in 1950, but by 1960 had a substantial number of Black residents. And Kalamazoo, already in 1950, was one of the two schools in the most heavily Black portion of the city (the other being Main). The court finds that a significant and growing number of Blacks resided in the Michigan attendance area at this time, and that the trend was evident by the late 1950's, as the boundary changes in question were being discussed or taking place. Dr. Remick testified that using census data his office could have predicted these trends based on the northward migration of Lansing's Black population, but no analysis was done. The effects of these population shifts on the school areas involved if not obvious were at least foreseeable.

Considered in this context then, it appears that the boundary changes in 1959 "to balance enrollment" among the three schools had at least two important consequences. First, it removed an entirely White area from Michigan, which had a substantial and growing number of Blacks, and placed it in Verlinden, which had always been, and remained at that time, nearly all White. Second, while taking this White area from Michigan the Board simultaneously added to Michigan an area from a substantially Black school service zone.

Attendance zone alterations which have the effect of exacerbating racial imbalance and isolation have been found in numerous cases to be indicia of segregative intent. See *Oliver; supra; Bradley v. Milliken, supra,* 484 F.2d at 221-236; *Davis v. School District of Pontiac, supra,* 443 F.2d at 576; *Keyes, supra,* 445 F.2d 990, 1001; *United States v. Board of School Commissioners of Indianapolis,* 474 F.2d 81, 85-86 (7th Cir., cert. denied 413 U.S. 920 (1973.))

After 1957, the Board made no changes in the boundaries of Main Street School.[25] Subsequently, in the early 1960's, Main Street School again became overcrowded, and two mobile units were placed there.[26] During the time mobile units were used at Main, some space was available at Verlinden, but no boundary changes were made. (The use of mobile units is discussed in greater detail below.) Between 1957 and 1972, a number of committees and study groups recommended to the Board that boundary changes be made to rectify racial imbalances, but it does not appear from the record that any such changes were made.

The rigidification of attendance zone boundaries around schools attended by the majority of Black students had the predictable and actual effect of "cementing" Black students into special areas and particular schools within those areas, and of preserving many other areas and schools for Whites. *Oliver v. Kalamazoo Board of Education, supra,* at 166, aff'd, *Oliver v. Michigan State Board of Education,* supra, at 183-84.

Related to this is the fact that between 1949 and 1965 there were 18 separate annexations of neighboring school districts by the Lansing School District. Def. Ex. 79A, B. Many of these

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[25] Def. Ex. 84; Additional Stipulations, No. 4. A map showing River Island attendance areas is in West Side Educational Facilities Ad Hoc Committee, "Report and Recommendations on River Island Elementary Schools, February 24, 1972," App. III-F, Addendum No. 1, Pl. Ex. 6.

[26] "Mobile Unit Locations—Historical Record 1962-1973." Def. Ex. 16.

annexed districts brought with them buses which they had been using, and continued to use, for transportation of their pupils to and from school. Def. Ex. 83. Each of these annexations presented the Board with an affirmative opportunity to re-examine the attendance zone boundaries of the district, and to work toward racial integration. Instead, in each instance, the Board chose neither to reorganize service areas nor to initiate any other action which would have minimized discriminatory racial isolation.

Too often, public officials act routinely on such matters, ignoring alternatives and failing to consider the natural and foreseeable consequences of their actions. While each annexation or similar agenda item has peculiar significance for a specific area or group of people, the school board has responsibility for and control over the entire district. It cannot be myopic. In order to discharge their obligations properly, school board members must look at the implications of each decision they make, in light of the best interest of the total district. Local school boards throughout the country have been no notice at least since the Brown decision in 1954 that they have a duty to eradicate discriminatory racial isolation. This duty should be constantly on the minds of school board members as they decide questions like boundary changes through annexation, transfers to relieve overcrowding, and selection of new sites. The Michigan State Board of Education and Michigan Civil Rights Commission articulated this idea well in their Joint Policy Statement when they stated that "(e)ach of these situations presents an opportunity for integration."[27]

Transfers

As the Board abandoned efforts to keep Main Street School racially integrated through boundary adjustments, it established

[27] See p. 61, infra.

special transfer policies which further exacerbated the problem of racial isolation. A Student Transfer Policy was adopted by the Board of Education in 1957 which permitted students to transfer because of emotional need, based on physician's statement. That policy, while neutral on its face, had the effect of accelerating the segregated nature of certain Lansing elementary schools. A policy which allows transfers from racial minority schools to racial majority schools, even when restricted, is tantamount to an authorization for White students to flee and is a means for the perpetuation of segregation. *Davis v. Board of School Commissioners*, 414 F.2d 609 (1969); *Monroe v. Board of Commissioners*, 391 U.S. 450 (1968); *Goss v. Board of Education*, 373 U.S. 683 (1963).

The policy was used by a large number of students to flee from predominantly Black Main and Michigan schools to Verlinden, a predominantly White school. A substantial number of those transferring were White students, though Whites made up a relatively small portion of the Main and Michigan student bodies.

The disproportionate use of this policy by White students, alleging emotional need to transfer into White schools, was widely recognized as an abusive practice. The Board of Education knew about misuse of the policy as early as 1961, when the Committee on School Needs, established by the Board, recommended that the transfer policy be changed, stating that "the school system, rather than contributing further to the problem of segregation, must make positive efforts towards ameliorating the situation."[28] Hortense Canady, who served on the Committee, testified that it was disturbed by the large number of transfers out of Black schools, and especially from Main Street School to predominantly White Verlinden, for purely racial or allegedly "medical" reasons. Both parties acknowledged that some special transfers also went from Michigan Avenue School, which was

[28] Pl. Ex. 3, p. 17.

becoming predominantly Black in the early 1960's, to Verlinden. In its 1961 Report to the Board, the Citizens' Committee recommended that a policy be established which would "discourage" and prevent transfer for reasons of race, nationality, or religion."[29]

Since the Board keeps special transfer statistics for only five years, and for a time was precluded from keeping any statistics on the basis of race, the parties were unable to present data on transfers for every year since 1957. However, stipulated evidence was presented to the court showing that in 1962-63, 20 White students and five Black students transferred into Verlinden. No other school had more than 3 students transferring into it that year. In 1963-64, 17 Whites transferred into Verlinden, in addition to 16 Black students, while the next highest number of transfers to any other school was 5. At that time, Main was 95% minority, Michigan 75% minority, and Verlinden was 6% minority. Between 1966 and 1973, 48 White and 125 Black students transferred into Verlinden. Thus for all the years for which statistics are available, 85 White and 146 Black students transferred into Verlinden.

These statistics do not tell the full story of the special transfers in the early 1960s. They do not show, for example, the service area from which the students transferred into Verlinden. However, testimonial and documentary evidence suggested that the White Verlinden transfers came primarily from the Main Street School service area, and exclusively from the Main Street and Michigan Avenue service areas combined.[30] The figures show that the policy was used by both Black and White students to leave the Black schools, and indeed there is testimony indicating that the policy was used by Black parents trying to get

[29] Id.

[30] Testimony of Hortense Canady and of William Webb at the July 1973 proceedings; "Report of the Education Committee of the Lansing Branch NAACP (1965)," Pl. Ex. 4.

their children out of the segregated schools and into an integrated setting. Testimony elicited by the defense counsel, e.g., showed that at least one prominent member of the NAACP used the transfer policy to move his children to Verlinden.[31] While these figures might be construed as evidence of a neutral policy, when they are considered in the context of the racial compositions of the schools involved, it is clear that the policy had a significant differential impact. During the years at issue, Main Street School was 95% Black, until 1969-70, and even then it was over 86% Black until the advent of the cluster program. In 1964, e.g., Main had only 20 nonminority students. Michigan Avenue school similarly was over 70% Black during the 1960's, and reached over 90% Black in the years immediately before the cluster program began. It had 93 nonminorities in 1964. So at a time when Main had 20 Whites, and the two Black schools together had 113, it is reasonable to infer that allowing 20 Whites to transfer in one year, and 17 in the next, had a significant impact on the racial makeup of these schools. In the three-year period between 1966 and 1969, a total of 31 White students attended Verlinden though they were nonresidents of that attendance area; for the same three years combined, the total number of White students at Main was 24.[32] In 1967, when Main had only nine Whites out of 312 students, 13 Whites were allowed to transfer into Verlinden. Moreover, this occurred at a time when Verlinden was becoming overcrowded, according to William Webb, Director of Pupil Personnel for the Lansing School District. When the policy was temporarily changed in 1967, one of the reasons was that Verlinden was becoming overcrowded.[33]

The bare statistics likewise do not state *why* students were allowed to transfer in such relatively large numbers into Ver-

[31] Testimony of Vernon Ebersole, Tr. 561.

[32] Def. Ex. 15; Pl. Ex. 66, 67.

[33] Testimony of Webb, Tr. 125.

linden school. The Board's "Policy Statement No. 6121: Equal Educational Opportunity," adopted on June 4, 1964,[34] stated the following with respect to transfers:[35]

> "The Board of Education recognizes that on occasion it has been necessary to deviate from the attendance-area concept and assign students to schools far removed from their homes. This has been done to eliminate overcrowding of certain schools. *In individual cases, a student has been allowed to attend a school other than the one to which he normally would be assigned. Such transfers have been authorized only because of the particular, individual needs of the student—usually curricular needs—which one school is prepared to meet, another is not.*" (Emphasis supplied.)

The suggestion was also made that each student was transferred for a bona fide "health" or "medical" reason.

The plaintiffs, in contrast, contend that the Board's system of special transfers in the Main-Michigan-Verlinden area amounted to a conscious departure from the neighborhood school policy in a situation where adherence to the policy would have produced a more even racial distribution among some schools, at least temporarily.

The testimony of the witnesses on this issue is particularly important, because of the gaps in the evidentiary data. There is no record, e.g., of how many transfers, or of what race, took place in the first five years under the policy. But there was enough activity during this time to prompt a committee appointed by the Board to recommend a change in the policy because of misuse. Likewise, there is another two-year gap in recordkeeping from 1964 to 1966, a significant period in light

[34] Reprinted in full in "Human Relations Report 1964," Pl. Ex. 21 at 5-8.

[35] "Human Relations Report 1964," at 8.

of the large number of Whites who had transferred in the preceding years. Again, a committee appointed by the Board and operating during the years for which there is now no concrete data, found the policy was being abused by White students fleeing Black schools on the pretext of "emotional need." The records that were kept showed only the receiving school, so again the testimony of witnesses was important in determining the actual effect of the policy on Black schools.

The 1961 report of the Committee on School Needs recommended that the policy be changed to require verification by a psychiatrist of the alleged emotional need. Kathryn Boucher, who headed the subcommittee which dealt with this question, and later became a school board member, testified that the recommendation was based on the members' knowledge of what types of youngsters were being transferred, and their belief that the policy was being abused.[36] Hortense Canady, who also served on the Committee, testified that what prompted the recommendation in 1961 were "medical transfers of a various nature that tended to transfer students in wholesale numbers from schools that were becoming more progressively Black in student body composition, and these students were being transferred to other schools that were predominantly White schools."[37] The Board, which had appointed the committee in 1959, received the report and was aware of its contents, but did not implement the recommended change.

In light of the Board's report in 1964 to the Lansing Human Relations Commission, incorporating Policy Statement No. 6121, set out above, the Board's knowledge of the abuse at that point in time might still be questioned. In that report, the board stated that "transfers have been authorized only because of the particular, individual needs of a student—usually curricular

[36] Tr. 606, 609.

[37] Transcript of July 17, 1973 proceedings, p. 19.

needs—which one school is prepared to meet, another is not." However, this report came at the end of a two-year period when 42% (58 of 139) of the transfers for the whole elementary school district were into one White School, Verlinden, from two Black schools, Main and Michigan. This either reflects adversely on the credibility of the Board's assertion, or indicates a significant disparity between the curricular programs of the White school and the Black schools.

At trial, the defendants did not attempt to justify the unusually large number of transfers to Verlinden as curricular. Moreover, the defendants have asked the court to make a finding that "the basic curriculum is the same throughout all of the elementary schools in Lansing School District."[38] Weighing the credibility of the Board's assertion, in light of the 1961 report to the Board of abuses, and subsequent reports, as well as the testimony of witnesses, the court finds that nothing in the 1964 report negates the finding that the Board was aware of misuse of the transfer policy at that time.

In 1965, the Education Committee of the Lansing NAACP prepared and presented to the Board of Education a report which, *inter alia*, critically discussed the transfer practices, and made a finding that no action had been taken since the 1961 recommendation and that transfers were still being granted as in the past.

The next year, 1966, the Board received the report of the Citizens' Advisory Committee, which it had appointed in 1965. This report again put the Board on notice that the policy was being misused. The committee wrote in its report:

> "The committee has investigated the use of medical permits obtained to enable a student from one school service area to attend another school. To the degree that medical

[38] Def. Proposed Findings of Fact, XII, p. 10.

> certification is both easily obtained and uncritically accepted, the attendance area standards of the school system are being subverted.
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> "*The committee recommends* that the procedure for obtaining medical permits be revised to cope with those relatively few cases where sound reasons may dictate a change in school assignment for emotional reasons. *It recommends* that the Board of Education utilize the services of a clinical psychologist or psychiatrist as part of the evaluation procedure."[39] (Emphasis in original.)

Vernon Ebersole testified that he recalled, as a member of the Board, that the Citizens' Advisory Committee in 1966 condemned the transfer policy.

The court finds most persuasive the testimony of William Webb, who as Director of Pupil Personnel was the school administrator directly responsible for transfers for the past twelve years. He testified that at the time the 1966 report was submitted, it was his feeling that the transfer procedures were being misused, and that he conveyed this information to the Board.[40]

In January 1967, the Board finally changed the policy so that any transfer based on emotional instability would require verification of a psychiatrist. However, in June of that same year, the Board rescinded the new policy and substituted one allowing certification by either a physician or a psychiatrist—in effect, requiring only a medical doctor's approval, as before.

Finally, the suggestion was made that each transfer was for a bona fide "health" or "medical" reason which existed apart from the desire of some to escape from predominantly Black schools to a nearby White one. The problem with this explanation, in

[39] Pl. Ex. 5, p. 16.

[40] Tr. 134.

addition to its conflict with the evidence recounted above, is its inherent improbability. The court does not find credible the suggestion that relatively large numbers of White students had special health difficulties requiring them to attend Verlinden (20 in 1962-63, 17 in 1963-64), while the next highest school received only 3 special transfers in 1962-63 and 5 in 1963-64, nor that such reasons necessitated the transfer of 231 students into Verlinden in nine years.

The wide disparity between Verlinden and other schools suggests that the majority reason for the transferring to Verlinden was other than medical, and the statistics on the racial balance of Main, Michigan and Verlinden lend credibility to the charge that the transfers to Verlinden were racially motivated, and allowed with the factor of race principally in mind.

After carefully weighing the testimony of the witnesses, and evaluating the relevant exhibits, the court is convinced, and finds as a fact, that the transfer policy was abused in a way which contributed to the segregative conditions in these schools, and with the knowledge of school officials and the Board of Education.

The Board's intentional maintenance of the transfer policy, and its refusal to change it, had the clearly foreseeable effect of increasing racial identifiability of Main Street School, Michigan Avenue School, and Verlinden School.

In *Morgan v. Hennigan*, Judge Garrity considered the rescission by the school board of a resolution it had passed modifying a transfer policy. He found in that case, as the court does here, that "the 'neighborhood school' policy was subordinated to the white students' presumed right to escape to safely white out-of-district schools." 379 F.Supp. 410, 456 (D. Mass. 1974).

Mobile Units

The school system's placement of some mobile units is further evidence of official action aggravating segregative conditions. Cf. Keyes, supra, 413 U.S. at 202, and 445 F.2d at 1000-01. When Main Street School became overcrowded during the period of the late 1950's and early 1960's, the Board of Education could have made the decision to alter boundaries or transport students to other attendance areas to relieve the situation. Instead, in 1962, it added two mobile units at Main Street, thus contributing to and perpetuating the racial identifiability of that school, which was well over 50% Black. During the time that the Board used mobile units at Main, nearby Verlinden Street School, in 1962-63, had only 330 students enrolled, but a capacity of 368. Also during the period when Main had mobile units nearby Barnes, with a capacity of 456, had actual enrollment of 425 (1962-63), 396 (1963-64), and 409 (1964-65). Verlinden is about 14 blocks, slightly over a mile, north of Main Street School, and Barnes Avenue School is about 1.2 miles southeast of Verlinden. A study by the Education Committee of the Lansing NAACP showed, based on research by Dr. John Porter, now Superintendent of Public Instruction, that in 1962-63, Verlinden had two vacant classrooms, and Barnes had one vacant classroom.[41] Both Barnes and Verlinden were predominantly White at the time.

Either through boundary changes or transportation of students,[42] the school system could have utilized vacant spaces in either of these schools to simultaneously relieve overcrowding at Main and affirmatively enhance integration. But instead it chose to use mobile units, containing, the Main Street School population on that campus, despite the objections of parents and community groups.[43] That transportation to relieve overcrowd-

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[41] Pl. Ex. 4, p. 20.

[42] The court notes that while Verlinden was within walking distance for a substantial number of Main Street area students, use of Barnes facilities probably would have required bus transportation because the Grand River runs between Main and Barnes.

[43] Community opposition to the use of mobile units at Main was pronounced. After a meeting between the NAACP and the Main

ing and achieve integration was a viable alternative is demonstrated by the fact that as a result of community displeasure with the mobile units, some Main students were transported to Walnut beginning in the fall of 1964. (In fact, it appears that the Board considered transportation as an alternative before it placed the mobile units.)[44] The use of Walnut also shows that the school board did not consider itself limited only to adjacent attendance areas when seeking to remedy overcrowded conditions in elementary schools.

Physical Conditions and Facilities

The maintenance of unequal facilities for Black and White students is another important indicium of de jure segregation. *Cf. Oliver v. Kalamazoo Board of Education*, supra, at 174-75; *Green*, supra, at 435.

Although Lansing elementary school facilities in general were adequately maintained, Michigan Avenue School was unquestionably an inferior facility, at least through the late 1960's and early 1970's. During this time it was predominantly Black. A

Street PTA in April 1963, the PTA appointed a committee to meet with the Board of Education to discourage additional use of mobile units at Main. It was not until Fall, 1964, that some students were transported to Walnut, and the mobile units were removed in the spring of 1965. A Citizens' Advisory Committee appointed by the Board of Education in 1965 also recommended that temporary units be removed from Main (Pl. Ex. 5, p. 27). Former board member Hortense Canady, who chaired the NAACP Education Committee, testified that that committee not only made its recommendation, but also circulated resolutions which were signed by citizens of the community, requesting that boundary changes, or some other method than continuing to overcrowd the Main campus, be adopted. (Transcript of July 1973 proceedings, p. 25.) Board member Vernon Ebersole also testified about objections voiced to the Board by some Main Street parents about the use of mobile units. (Tr. 508.)

[44] Pl. Ex. 4, p. 19.

deteriorating interior, coupled with a high pupil per acre ratio,[45] and overheating problems serious enough to affect student performance highlighted the inadequacies.

There was testimony that the main reason this building was not adequately maintained, and was allowed to deteriorate, was that the state had purchased or was about to purchase it. Since the school would then be replaced with a new facility, the school district wanted to make no major expenditures on the old building. Dennis Semrau testified that he was told when he became principal at Michigan in 1968 that the building would be used only three more years. It is still in use today, over seven years later; a whole K-6 generation of students has gone through the building since then.

The defendants have urged that the failure of the Board of Education to act decisively with respect to Michigan was due to uncertainties arising primarily from actions of state officials planning the capitol expansion and a possible state highway project involving Logan and Butler Streets. Whether school officials alone were responsible for the situation at Michigan School, or whether state officials contributed to the problem, it appears that the acts of public officials resulted in unequal facilities for this Black school. Many of the other conditions plaintiffs complain of were found in both Black and White schools, but the only school allowed to operate under the inferior physical conditions existing at Michigan was this one, a Black school.

Aside from the unequal conditions at Michigan Avenue School, the Lansing School District operated otherwise in a racially neutral manner with regard to facilities. Schools were (for the most part, but with important exceptions discussed elsewhere in this opinion) attended by children who lived within the

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[45] The size of the Michigan Avenue School site is 1.34 acres, smallest in the River Island Area, and fourth smallest of the 47 elementary schools in the district.

service area, and there is no evidence that school officials were responsible for racially imbalanced residential patterns. The same schools now used primarily by minority students were once used by Whites. It appears that the buildings have been adequately and equally maintained throughout the district. Equipment and teaching materials at minority schools have been at least equal, and perhaps better, than those available at other schools, due to the effective use of federal funds. There are a few White schools with small site sizes, and schools with larger sites are primarily in outlying areas annexed after 1950.

However, these ameliorative factors do not change certain unfortunate realities concerning the minority schools. Heavily minority schools tend to have the smallest sites, with the largest number of pupils per acre of school area. As of 1972, the average acreage of school site areas was 8.2 acres for schools whose enrollments was between 0% to 10% minority, 5.4 acres for schools whose enrollment was between 11% and 31% minority, and 3.2 acres for schools whose enrollment was 32% to 100% minority. As of 1972, using figures which make allowance for kindergarten students attending on a half-day basis, the average number of pupils per acre for schools with between 0% and 10% minority students was 54.99 pupils per acre, for schools between 11% and 31% minority, 91.09 pupils per acre, and for schools between 32% and 100% minority, 150.91 pupils per acre.[46]

Not surprisingly, corollary figures show that there is less average acreage of playground area at minority schools, and a greater number of pupils per acre of playground area. For example, in 1970, the mean number of pupils per acre of playground area for the district was about 125, while for Kalamazoo it was about 475.[47] The Lansing School District's 1968 Facility Planning

[46] Stipulations filed October 15, 1975, Nos. 8, 9.

[47] Pl. Ex. 45.

Study listed a number of schools where "playground activities and physical education programs are extremely hindered by lack of playground areas." The list included all five schools with minority enrollments in excess of 40%—Allen, Cedar, Kalamazoo, Main, and Michigan.[48] (There was testimony that school officials tried to compensate for this problem through use of multi-purpose rooms and/or adjacent park areas, where available.)

Although school officials apparently maintained a racially neutral policy of adequately maintaining facilities throughout the district (with the noted exception of Michigan) the relative size and conditions of substantially minority schools nonetheless produced discriminatory effects because other discriminatory acts and omissions were predicated on them.

A specific example is the closing of Kalamazoo Street School. This facility was phased out gradually and finally closed in 1970, according to board members largely because of dwindling enrollments.[49] Yet there was no attempt made (from what appears in the record) to bring White students in to Kalamazoo, filling classrooms and simultaneously integrating the school, despite the fact that when Kalamazoo was closed, its students were bused out to White schools. Thus it is clear that busing was not the impediment. If the problem was that school officials felt the

[48] "1968 Facility Planning Study," Pl. Ex. 38, p. 36; "1968 Ethnic Count Report," Pl. Ex. 66.

[49] Board member Vernon Ebersole, asked by defense counsel why he voted in 1969 to bus students from the Kalamazoo area, replied: "The school was losing their population over a period of time for the reasons I gave, the State Complex, the I-496 Complex, to the point where it was getting uneconomical to operate it with the number of youngsters who would be attending." Tr. 560.

See also, testimony of Ebersole, Tr. 519. Board member Joan Hess testified that at the time Kalamazoo was phased out, it was slowly losing most of its students because of the capitol complex, Oldsmobile expansion, and highway projects. Tr. 426.

Kalamazoo campus, because of lack of playground facilities or other inadequacies, was not good enough for continued use (not satisfactory for use by White students coming in), or at least that it was relatively less adequate than the White schools to which Kalamazoo area students were to be bused, then the discriminatory effect is clear. Kalamazoo area students were denied the right to attend their neighborhood school,[50] and had to bear the burden of one-way busing because their own school was inadequate. It has been previously noted that Kalamazoo had the highest ratio of pupils per acre of playground area. Much more significant is former board president Rosa's testimony that as Kalamazoo was phased out, the third floor was closed first, because it was considered a hazard.[51] If the Kalamazoo facilities were not considered inadequate and inferior, the failure of school officials to use that school rather than depend solely on one-way busing to achieve integration is all the more inexcusable.[52]

Similar circumstances surrounded the closing of Lincoln. Long a Black school, Lincoln suffered dwindling enrollment, due primarily to expansion of Oldsmobile operations and an interstate highway project, to the point that board members felt it was not economically feasible to keep it open.[53] It appears that these classroom vacancies also presented the Board with an opportunity for integration. The decision not to bring White students in, but to instead close the school, bus Black children

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[50] Present Board member Joan Hess, not a member at the time Kalamazoo was phased out, arguing that children in that area should be allowed to attend their neighborhood school, stated: "Every time you remove a school from an area, you automatically condemn that particular area to deterioration, because you lose the young vital families moving in." Tr. 429.

[51] Testimony of Clarence Rosa, Tr. 74.

[52] The problem of one-way busing is discussed in more detail below, at pp. 115-120, infra.

[53] See testimony of Kathryn Boucher, Tr. 612; see also, testimony of Clarence Rosa, Tr. 75-76, and Vernon Ebersole, Tr. 514-18.

out, and sell the building for demolition by Oldsmobile Corporation, could be interpreted as another indication of the relative inferiority of Black facilities.

The industrial and state and federal governmental expansion programs, of course, constituted a significant outside influence on Board actions in this regard, which should be noted. The programs of the state government—unquestionably acts of public officials—included most notably the state capitol expansion project, the construction of I-496, and plans by the highway department for development of Logan and Butler streets. The I-496 project which had the most devastating impact on these neighborhoods, was also carried out through acts of federal government officials, with federal funds. Each of these activities had a significant impact on the demographics of the West Side Area, displacing many hundreds of families and altering the physical complexion of the community. It likewise had a major impact on the school system, contributing heavily to dwindling enrollment, leaving neighborhoods unsatisfactory for school facilities, and causing uncertainties which delayed essential school planning with concomitant perpetuation of inadequate conditions in at least one school. In addition to these state and federal government activities, there was also extensive encroachment by industrial and commercial developments in previously residential neighborhoods. Current and former board members testified that besides the primary influence of Oldsmobile Corporation expansion, there was also similar activity by other industries, including Industrial Welding, by businesses and professional offices, and by the Lansing Community College. While this activity was primarily the result of private sector decisions, the cooperation of public officials, at least with respect to zoning, was necessary for much of it. The West Side Educational Facilities Ad Hoc Committee, in its 1972 report to the Board, cited numerous zoning decisions contributing to the decline of available residential dwellings in some area, particularly on the edges of the Central Business District, the Lansing

Community College campus, and the Governmental Complex, and increasing population density in others.[54]

Thus, it is abundantly clear that government actions at all levels—federal, state and local—contributed significantly to conditions adversely affecting predominantly minority schools in the ways described above. The governmental authorities involved are liable for the consequences of their actions, which were readily foreseeable, and school officials are responsible for the foreseeable consequences of their omissions or commissions under the factual circumstances found in this opinion.

Faculty Hiring and Assignment

There is evidence that in the early 1950's at least, the hiring practices of the Lansing School District were racially discriminatory. Two women testified that they were initially told when they applied that the district either did not hire, or already had its quota of Blacks, although each was in fact hired in the year she applied. Olivia Letts had taught three years elsewhere before applying to the Lansing School District in 1951. She testified that when she applied, she received a letter from then assistant superintendent, Dr. Forest Averill, stating that the school system was not hiring Blacks as teachers. He told her, however, that they had contemplated hiring and were at that time looking for a secondary staff member, and that it would probably be only a matter of time before they would hire a Black elementary teacher. She was ultimately hired that year as the first Black elementary teacher in the district, and was assigned to Lincoln School, which was 99% Black. That same year, the district hired its first Black secondary school teacher.

The other woman, Jerusha Bonham, and her husband both applied in 1953. At that time she had a master's degree in elementary education, and had completed one term on a doctorate in elementary education. She testified she was told by

[54] Pl. Ex. 6, App. III-C.

Dr. Averill that although the district always needed elementary teachers (there were no secondary openings), it already had its quota of minority teachers for that year. She was in fact subsequently hired, and began teaching in September 1953. Her husband, after working as a bricklayer on the construction of the Frandor Shopping Center, was hired to teach beginning in 1954.

Former Board president Clarence Rosa, who served on the Board from 1957 to 1972, testified that he had heard of a quota hiring policy before he came to the Board, but that he knew of no evidence of one after he became a member.

Subsequently, the Lansing School District began hiring more minority personnel, including Spanish-Americans in addition to Blacks, but the District has not hired the same proportion of minority personnel as the proportion of minority sudents.[55] The following chart illustrates this fact:

PERCENTAGE OF MINORITY PERSONNEL AND MINORITY STUDENTS[56]

Year	*Minority* Personnel***	*Percent of Total Personnel*	*Percent Minority Students*
1967-68	66	3.8%	14%
1968-69	70	4.2%	15.3%
1969-70	92	5.1%	16.7%
1970-71	130	7.9%	18.7%
1971-72	154	9.2%	20.4%

* "Minority" includes Black and Spanish-American.

** "Personnel" includes certificated Administrators, Coordinators, and Elementary and Secondary School Teacher.

[55] Additional Stipulations, No. 12.

[56] From "In-Service Training Manual," Pl. Ex. 9, and testimony of Mr. Dwayne Wilson, Advisory Specialist for Equal Educational Opportunity, Lansing School District.

There is testimony that the Lansing School District actively recruited in good faith around the country, seeking minority applicants for teaching positions. These efforts met with uneven success, but eventually paid off, and it appears that there is at present no discrimination in the hiring practices of the District.

But as racially discriminatory hiring practices were eliminated, another troublesome situation developed. A number of Lansing elementary schools were or were becoming racially identifiable. There is evidence that minority teachers were disproportionately assigned to those schools which were predominantly Black. Such a practice has been found in numerous cases to be important evidence of segregative intent. Swann, supra, 402 U.S. at 18; Keyes, supra, 413 U.S. at 196; Oliver v. Kalamazoo Board of Education, supra, at 176-78, aff'd., Oliver v. Michigan State Board of Education, supra, at 185; Berry v. School District of Benton Harbor, 515 F.2d 238, 240-42 (6th Cir. 1974); Morgan v. Hennigan, supra, at 456-61.

At least one Citizens' Committee communicated to the Board the importance of distributing minority teachers throughout the schools of the District, and the school system officially had a policy of doing so. Nonetheless, the evidence shows that Lincoln, e.g., which had been overwhelmingly Black since at least 1950, and had been assigned the District's first Black teacher and first Black principal, had a staff which was 50% Black (the principal and 3 of 7 teachers) when it was closed in 1965. At predominantly Black Michigan Avenue School, 3 of 14 teachers were Black in 1968, 4 of 13 in 1969, and 5 of 13 in 1970 and 1971.[57]

[57] Plaintiffs urge the court to find that assignment of professional staff personnel as a whole, including in addition to teaching staffs, principals, librarians, counselors, social workers, nurses and community coordinators, was also racially disproportionate. While it appears that schools with larger Black enrollments also had larger than average percentages of Black professional staff, the evidence is inconclusive. Exhibit 37 shows that the mean for the District for percentage of professional personnel from minority groups was 4%, while Michigan, a 93% Black school had 24%. However the statistics are inconclusive overall. The next highest was 15% at Willow, which had 34% minority student population. Kalamazoo, with 89% minority students, had 8% minority staff, while Horsebrook, with 1% minority students, had 10% minority staff.

It was stipulated that "the Board of Education has exercised a policy of assigning Black teachers to predominantly Black Schools, disproportionately, with the two remaining Black Schools, Main and Michigan, having 33% and 46% minority teachers, respectively.[58] In January of 1972, 7 elementary schools which had 10% or less minority student enrollment had no minority teachers at all.[59] Thus, in the absence of an explanation from the Board for these differences, it appears probable that the Board has to a significant degree discriminatorily assigned minority teachers to minority schools.

Conceding some instances of disproportionate assignment, defendants argue that "one reason for the assignment of Black teachers to Black schools was to 'bring about a better kind of communication pattern'."[60] The defendants also argue that the teachers were well qualified and that there was community support for the practice. The court does not question the quality of the teachers involved,[61] nor does it deny the possible benefits in a relationship between Black teachers and Black students. But as then District Judge Albert Engel (now on the Sixth Circuit Court of Appeals) stated in Higgins v. Board of Education of Grand Rapids:

[58] Additional Stipulations, No. 13.

[59] Testimony of Mr. Dwayne Wilson; "In-Service Training."

[60] Def. Proposed Findings of Fact, No. XI, p. 9.

[61] Plaintiffs have introduced evidence comparing the average number of years of teaching experience for teachers in schools with significant minority enrollments and other schools throughout the district. The court is unwilling to draw any conclusions from these statistics, particularly in light of considerable testimony indicating the competence of teachers in these minority schools.

> "A disproportionate percentage of black faculty, it is agreed, tends to racially identify the school in the perceptions of its own students, of the students in 'white' schools, and of the public. Conversely, it is recognized that a racially balanced faculty has great benefit by improving the perception of the white community of the capabilities and achievements of blacks in a pluralistic society." 395 F. Supp. 444, 478 (1973).

The efficiency of assigning Black teachers disproportionately to a particular school for purposes of their relationship with Black students assumes the continued existence of racially identifiable schools. It is an indicium of intent to maintain the facility as a racially identifiable school, and the practice itself helps make a given school racially identifiable. Though there is some evidence that the Board has attempted to obtain a more neutral distribution of Black teachers throughout the District in recent years, it remains a fact that the school district has in the past knowingly maintained racially disproportionate staffs at Black schools. The court finds that this has had the effect of increasing and perpetuating the racial identifiability of the schools in question, and that this effect was a natural and foreseeable consequence of the policy.

IV

The Lansing Board was in the middle 1960's becoming increasingly conscious of the severe racial concentration which existed in several elementary schools. In 1964, Lansing had 16,654 elementary students in 39 elementary schools. Of these, 1,694, or about 10%, were Black, and about 77% of these attended only four schools: Lincoln had 173 students, all Black; Main Street School had 424 Blacks of 444, about 95%; Kalamazoo School had 454 Blacks out of 558, about 81%; Michigan Avenue School had 276 Blacks out of 373, about 74%. At the other end of the spectrum, 15 elementary schools had no

Blacks enrolled, and 10 other elementary schools had less than 10 Blacks.[62]

On June 4, 1964, the Lansing Board of Education adopted the first of a series of important resolutions, a "Policy Statement on Equal Educational Opportunity," generally acknowledging its obligation to provide equal educational opportunity to all children insofar as it was able to do so. "Today's schools," the statement said

> "must provide each child with an equal opportunity to learn and to fulfill his innate potential. The schools must assist each child in discovering and developing his potentialities, and must aid each child in recognizing his inherent worth to himself and to society . . .
>
> * * *
>
> *"The Board of Education shall not establish or knowingly sustain any condition which is detrimental to a child's sense of individual worth, providing it is within the power of the Board to change such condition."*

At the same time, the Board asserted that its attendance areas for elementary and secondary schools had been established on a geographical basis without regard to race, creed, religion or national origin. While acknowledging that this neigborhood school policy resulted in an "imbalance of minority group pupils," the Board stated that this circumstance resulted from factors beyond the control of the Board, and stated that the policy would continue.[63]

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[62] Additional Stipulations, No. 14; "Human Relations Report 1964," at 9-10.

[63] Reprinted in "Human Relations Report 1964," at 5-8. Emphasis added. In 1963, the People of the State of Michigan adopted a new Constitution which provided, "Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin." Art. VIII, Sec. 2. The Board's Policy Statement is properly in accordance with this provision.

In the fall of 1964, the Board initiated a policy of transporting students out of the River Island area in order to relieve overcrowding and to relieve racial isolation of White schools in other parts of the Lansing School District. This policy continued until the initiation of a more comprehensive transportation plan in the 1972-73 school year, and is discussed in detail, infra, at pp. 115-120.

While taking these steps to ameliorate the difficulties in the River Island area, the School Board decided it needed more detailed information and more informed citizen opinion and recommendations concerning additional steps which might be taken. On February 11, 1965, the Lansing Board of Education resolved to create a Citizens' Advisory Committee on Educational Opportunity, to be composed of citizens from all parts of the district. Among other things, the Committee was charged with making a comprehensive examination of steps to be taken to insure an equal educational experience for all children residing in the school district and an examination, too, of the possibility of realignment of school service areas.[64]

In the course of their study, the Committee collected statistics on the racial composition of Lansing schools. The data collected on the fourth Friday of the 1965 school year revealed a total of 17,882 elementary school students, of which 1,853, or approximately 10.3% were Black. Of 48 elementary schools existing at that time, 11 had no Black students whatsoever; 7 had either 1, 2, or 3 Black students. On the other hand, several schools were disproportionately Black: Main was 86% Black; Kalamazoo was 79.3% Black; Michigan was 71.3% Black. Six other elementary schools were between 11.5% and

[64] Citizens' Advisory Committee on Educational Opportunity, "Report of the Citizens' Advisory Committee on Educational Opportunity," submitted to the Board of Education, June 23, 1966, App. A., at 52-53. (Hereinafter cited as Citizens' Committee Report 1966.")

20.5% Black. In addition, the Committee made a more detailed study of many schools. On the basis of all their collected data, the Committee reported, "*Lansing has segregated schools.*"[65]

The Committee also studied the effects of segregation. "The work of the Committee," according to its 1966 Report, "involved first hand observation of the effects of segregated education. Meetings of the committee of the whole, meetings of subcommittees, and individual study and evaluation led to a unanimous conclusion that de facto segregation in our educational system has done and will continue to do great harm both to the individuals involved and to the community as a whole. The committee believes that segregated education and quality education are not compatible. . . ." Similarly, the Committee concluded that "segregated education in unequal education."[66]

Several recommendations followed from these conclusions. Among other things, the Committee recommended that an existing policy of transporting children from overcrowded schools to other areas of the city continue. (The overcrowded schools were mostly Black, and those transported were consequently mostly Black.) The Committee also recommended that

[65] Id., App. R-3, at 88-89; 3-4. Italics in original.

While citizen concern with segregation is justifiable and indeed necessary, the characterization of conditions as "de facto" or "de jure" segregation, as counsel for defendants aptly noted at trial, is best left to the court. Witnesses testifying and documents offered in evidence throughout the trial have used a variety of terms to describe disproportionate racial distribution in schools or neighborhoods. The unreliability of these terms as guides for judicial decision-making is exemplified by the fact that in at least one major committee report submitted to the Board, the use of one term rather than the other was decided by majority vote. Testimony of Hortense Canady, Transcript of July 17, 1973 proceedings, pp. 45-46. This court has looked at the facts presented rather than the labels attached to them to draw its legal conclusions.

[66] Id. at 2, 7.

the largely Black schools be phased out completely, and the children transported to other areas of the city. Over the long run, said the Committee, consideration should be given to a variety of positive programs designed to achieve an integrated quality education.[67]

Following the receipt of the Citizens' Advisory Committee Report, the Lansing Board of Education amended its Policy Statement on Equal Educational Opportunity to read, in part, as follows:

> "Equal educational opportunity is most possible to achieve in schools where there is reasonable balance in the racial composition of the student population. It shall be the goal of this school district to achieve such balance. The Board of Education believes that in any racially-mixed community segregated education and quality education are not compatible and that steps must be taken to insure that the school system advances further toward the goal of true equality of educational opportunity."
>
> * * *
>
> "The Board of Education shall not knowingly establish or sustain any condition which is detrimental to a child's sense of individual worth, and shall actively seek to find ways to change these conditions when such conditions inhibit learning.
>
> ". . . However painful the admission, the Lansing Board of Education accepts as a fact that this school district has racially imbalanced schools. Further, it believes not only that segregation is wrong; its asserts with equal conviction that integration is right. The Board of Education recognizes the educational values inherent in the neighborhood school concept. On the other hand, this Board believes that when neighborhood schools result in segregated education and that deviation from the neighborhood-school concept can mean integrated education, that such deviation is much more desirable."[68]

[67] Id. at 9-12.

Between 1967 and 1971, the Lansing Board of Education and the administrative authorities conducted further studies and made further recommendations concerning all aspects of the problem of providing an equal, quality education for all Lansing students. By 1971, the original 1966 Citizens' Advisory Committee Report was somewhat dated, so the Board resolved to establish a new and second Citizens' Advisory Committee on Educational Opportunity. Among other things, the Committee was to review the 1966 Report and made new recommendations where necessary; to review the existing policies and official statements of the Board regarding equal educational opportunity, and recommend additions or changes; and to recommend to the Board a plan and timetable for the final desegregation of all schools in the district. On the basis of 1971-72 school year statistics, the Committee concluded that Lansing elementary schools were "*still segregated*, in terms of governmental requirements."[69]

On examination of all the relevant statistical evidence presented to the court, including the stipulations of the parties, has revealed the following about the Lansing School District during the 1971-72 school year, on the eve of the adoption of the desegregation plan which is the principal subject of this litigation. The District covered an area of approximately 50

[68] Adopted Jan. 19, 1967. Reprinted in "In-Service Training: Board Members and Administrators, Lansing, Mi. January 27 and 29, 1972," (unpaginated). Pl. Ex. 9. (Hereinafter cited as "In-Service Training.")

[69] Citizens' Advisory Committee on Educational Opportunity, "Report of the Citizens' Advisory Committee on Educational Opportunity, April 20, 1972," at 1. (Hereinafter cited as "Citizens' Committee Report 1972.)

square miles, extending in many places beyond the boundaries of the City of Lansing itself. About 33,000 students lived in the District. Of these, 4,600, or about 14% were Black; 2,400, or about 7%, were Spanish-American, and .3% were American Indians. About 18,800 students attended the 48 elementary schools. Of these students, approximately 2,600, or 14% were Black; 1,400, or 7%, Spanish-American. Two elementary schools were predominantly Black: Main Street School was 85% Black, and Michigan Avenue School was approximately 80% Black and 10% Spanish-American. Cedar Street School in the northern part of Lansing outside the River Island area was 49% Spanish-American, 46% White, and 4% Black.[70]

The Cluster Plan

As the 1971-72 school year drew to a close, the Lansing School Board reviewed the history of the problem of racial and ethnic concentration in the elementary schools, and considered the recommendations of the Citizens' Advisory Committee on Educational Opportunity, whose Report had been submitted in April. The Committtee had suggested the adoption of one of three alternative plans for the integration of the District. The Committee stated that its plans had been framed in recognition of the parameters established by legal decisions rendered since the early 1950's on the subject of desegregation of public education.[71] Two of the three proposed plans involved all elementary schools in the system; the third involved approximately

[70] Lansing School District, "Proposal for Assistance Under Public Law 92-318, Title VII—Emergency School Aid," (1972), at 5. Pl. Ex. 2. (Hereinafter cited as "1972 Proposal."). "River Island Report 197[illegible]" App. III-F, at 1. "Ethnic Count Report, Five Year Period Nov. 1967-Dec. 1971," stipulated as accurate, Additional Stipulations, No. 18. Stipulations 2, 7, 10, 15. Some slight discrepancies appear among various statistical stipulations and documentary statistics accepted as accurate. These discrepancies are minor, and do not affect the ultimate conclusions.

[71] "Citizens' Committee Report 1972," at vii.

25.[72] On June 1, the Board resolved to consider its own compromise plan for desegregation involving 13 schools, at a subsequent meeting.

On June 15, 1972, James E. Slack and others, as next friends of minor children, filed a civil action in the Circuit Court of the State of Michigan in and for Ingham County against the Board of Education of the Lansing School District and others, charging that the consideration, adoption, and implementation of the proposed cluster plan would violate their constitutional rights. The Circuit Court issued a temporary restraining order preventing the Board from considering or adopting its plan. As a result of a petition filed by the defendant on June 19, 1972, the cause was removed to this court. After a hearing held on June 26, the temporary restraining order was set aside. Subsequently, by stipulation of the parties the cause was dismissed without prejudice.

Following public hearings and extensive public discussions, the Board of Education, on June 29, 1972, resolved to adopt its proposed cluster plan. In the extensive Preamble to its Resolution, the Board noted that it had fully considered the 1972 Citizens' Advisory Committee recommendations and also the information and comments submitted to it during public hearings. The Board further stated its conclusion that there remained in Lansing several elementary schools which were, "by definition, segregated schools." The Board finally reaffirmed the 1964 Policy Statement on Equal Educational Opportunity, including its belief that segregation in schools was wrong and integration in schools was right, and went on to adopt the cluster plan in order "to further progress toward equalization of educational opportunity in the Lansing School District."[73]

[73] Lansing Board of Education, Minutes, June 29, 1972. Pl. Ex. 8.

[72] Stipulation No. 16.

The desegregation plan adopted by the Board at that time includes provisions for thre cluster groups, two to be implemented in 1972-73, and one to be implemented in addition during 1973-74. The plans involve only grades three through six. No kindergarten, first or second grade students are involved in any of the three clusters. According to the original schedule, further study and planning were to take place during the period 1972-1974 to the end of developing and implementing additional clusters as the need appeared.

Clusters One and Two were implemented in September 1972, and remained in existence throughout the 1972-73 school year.

Cluster One involves four schools, Main Street, Barnes Avenue, Elmhurst and Lewton. The operation of Cluster One required the elimination of the fifth and sixth grades at Barnes and Lewton Schools and the elimination of the third and fourth grades at Main and Elmhurst Schools. Transportation is required as follows in Cluster One: (A) All of the third and fourth grade students are transported from Main to Elmhurst. (B) All of the fifth and sixth grade students are transported from Barnes to Main. (C) All of the third and fourth grade students are transported from Elmhurst to Barnes and Lewton. (D) All of the fifth and sixth grade students are transported from Lewton to Elmhurst.[74] The distances involved are not great. The approximate distance between Elmhurst and Barnes is .8 mile; between Elmhurst and Lewton, 1.2 miles; between Barnes and Main, 1.2 miles; between Main and Elmhurst, 2.1 miles; between Main and Lewton, 2.6 miles. While travel time depends on traffic patterns and other variables, the plaintiffs offered a formula to estimate the average travel time: Multiply the first mile by five minutes and each subsequent mile by two minutes.[75] Thus, by this formula, the average time to travel the longest distance involved in Cluster One, 2.6 miles, is 8.2 minutes.

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[74] Additional Stipulations, No. 8.

[75] Distance Chart, Pl. Ex. 10.

Cluster Two likewise involves four schools: Michigan Avenue, Maple Hill, Cavanaugh, and Everett. The operation of Cluster Two required the elimination of the fifth and sixth grades at Cavanaugh and Maple Hill and the elimination of the third and fourth grades at Everett and Michigan Avenue schools. Transportion is required as follows: (A) all of the fifth and sixth grade students are transported from Cavanaugh to Michigan. (B) All of the third and fourth grade students are transported from Everett to Cavanaugh and Maple Hill. (C) All of the fifth and sixth grade students are transported from Maple Hill to Everett. (D) All of the third and fourth grade students are transported from Michigan to Cavanaugh; some of the fifth and sixth grade students are transported from Michigan to Everett.[76] The aproximate distances involved are as follows: Between Cavanaugh and Everett, .8 mile; between Everett and Maple Hill, .4 mile; between Cavanaugh and Michigan, 3.4 miles; between Michigan and Everett, 3.6 miles.[77] The longest travel time, computed according to plaintiffs' formula, is approximately 1.2 minutes.

The parties have stipulated as to the impact of the cluster plans on the racial and ethnic composition of the schools involved. The following chart illustrates the changes which took place when the cluster plan was implemented. The 1971-72 column indicates the percentage of each school which was minority in the last full school year before the clusters were implemented. The 1972-73 column indicates the composition of the schools during the first year with the clusters in effect.

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[76] Additional Stipulations, No. 8.

[77] Distance Chart, Pl. Ex. 10.

CLUSTERS ONE AND TWO[78]

% Minority

Cluster One	*1967-68*	*1968-69*	*1969-70*	*1970-71*	*1971-72*	*1972-73*
Main	97%	97%	89%	90%	88%	65%
Barnes	6%	5%	6%	6%	7%	15%
Elmhurst	4%	8%	9%	9%	7%	19%
Lewton	0%	0%	1%	15%	11%	22%
Cluster Two						
Maple Hill	1%	11%	17%	17%	15%	24%
Michigan	87%	84%	90%	92%	90%	55%
Cavanaugh	1%	1%	3%	4%	4%	21%
Everett	2%	2%	2%	3%	5%	15%

Cluster Three involves five schools: Grand River, High, Oak Park, Cedar and Post Oak. Cluster Three will require the elimination of the third and fourth grades at Grand River and Post Oak Schools, and the elimination of the fifth and sixth grades at High, Oak Park and Cedar Schools. The plan requires transportation of third and fourth grade students from both Grand River and Post Oak to both High and Oak Park-Cedar. Fifth and sixth grade students are transported from High to Post Oak and from Oak Parker-Cedar to Grand River.[79] As with the other clusters, the distances involved in Cluster Three are not great. The approximate distance between Grand River and High is .4 mile; between Grand River and Oak Park-Cedar,

[78] Data from Lansing School District, Ethnic Count Reports for years 1967 through 1975, Pl. Exhibits, 67, 66, 65, 69, 64, 72, 63, 73, and 74, respectively.

[79] Lansing Board of Education, Minutes, June 29, 1972, App. C. Pl. Ex. 8.

.8 mile; between High and Post Oak, 1.8 miles; and between Post Oak and Oak Park-Cedar, 2.6 miles. Again applying the travel time formula, it appears that the average time to travel the longest distance involved in Cluster Three is 8.2 minutes.[80]

The impact of the implementation of Cluster Three on the racial and ethnic composition of the schools involved is illustrated in the following chart. The 1972-73 column indicates the percentage of each school which was minority in the last full school year before this cluster was implemented. The 1973-74 column indicates the composition of the schools during the first year Cluster Three was in effect.

CLUSTER THREE[81]

	1967-68	*1968-69*	*1969-70*	*1970-71*	*1971-72*	*1972-73*	*1973-74*
Cedar	41%	41%	46%	45%	56%	67%	50%
Grand River	32%	29%	33%	38%	37%	41%	37%
Oak Park	17%	27%	32%	32%	37%	42%	39%
Post Oak	4%	4%	5%	5%	5%	7%	13%
High	28%	31%	34%	34%	34%	35%	32%

The following, finally, shows what the effect would be of allowing rescission of the cluster plan at the present time. The 1975-76 column reflects the latest data available showing percentage of minority students in each of the schools involved in the three clusters. The other column reflects what the percentage of minorities would be in each of these schools if there were no cluster plan. Figures in the latter column were taken from an exhibit prepared by school district officials showing what the racial distribution of students in each attendance area is, without regard to their actual school attendance.

[80] Distance Chart, Pl. Ex. 10.

[81] Data from Ethnic Count Reports, see note 81, supra.

EFFECT OF ALLOWING RESCISSION
AT THE PRESENT TIME
CLUSTERS ONE, TWO AND THREE
% MINORITY[82]

Cluster One	*1975-76*	*Without Clusters*
Main	67%	80%
Barnes	22%	14%
Elmhurst	23%	9%*
Lewton	21%	3%
Cluster Two		
Maple Hill	21%	5%
Michigan	65%	83%
Cavanaugh	29%	9%
Everett	22%	10%
Cluster Three		
Cedar	50%	57%
Grand River	51%	43%
Oak Park	43%	33%
Post Oak	13%	2%
High	32%	43%

[82] Data from Ethnic Count Reports, see note 78, supra.

* The actual minority enrollment at Elmhurst could be slightly higher if the cluster plan were rescinded because Elmhurst also receives students from the Michigan service area due to overcrowding (Def. Ex. 84), and the figures supplied by the school district assume absence of both clusters and one-way busing. This effect would appear to be minimal, however, since Elmhurst is the only cluster school which would continue to receive students in this manner. Lewton and Maple Hill receive students from the former Kalamazoo School area, but at present there is no plan to send these students to any other school.

Before the cluster plans could be implemented, some Lansing residents undertook to delay or prevent the implementation of the cluster-school plan by removing from office those Board members who had voted to adopt the plan, and replacing them with members who were hostile to the desegregation program. Recall petitions were circulated, signed, and duly filed. A recall election was scheduled for November 7, 1972.

On October 17, 1972, the National Association for the Advancement of Colored People and individual students and their parents who reside in the Lansing School District filed the present action in this court. The plaintiffs asked the court to enjoin the pending recall election and also requested a declaratory judgment and an injunction to prevent the Board from repealing, replacing, or otherwise nullifying the cluster-school plan which the Board had adopted on June 29. Following a hearing, this court on October 27, 1972, refused to enjoin the recall election, but retained jurisdiction of the other matters in this cause.

The election of November 7, 1972, resulted in the recall of five members of the Lansing Board of Education who had voted in favor of the cluster-school plan of June 29. The resultant vacancies were filled in a special election held on January 11, 1973.

At its meeting of February 1, 1973, the newly constituted Board amended Policy Statement 6121 on Equal Educational Opportunity to *omit*, in addition to other language, the following:

> "It is the position of this Board that there are three ingredients to a successful program for disadvantaged children: compensatory education, improvement of self-concept, and social and racial integration. It is also the position of this Board that this school system must devise some means of providing for each of these ingredients. . . .
>
> Equal educational opportunity is most possible to achieve in schools where there is reasonable balance in the racial

composition of the student population. It shall be the goal of this school district to achieve such balance. This Board of Education believes that in any racially-mixed community segregated education and quality education are not compatible and that steps must be taken to insure that the school system advances further toward the goal of true equality of educational opportunity.

* * *

The Board of Education shall not knowingly establish or sustain any condition which is detrimental to a child's sense of individual worth, and shall actively seek to find ways to change these conditions when such conditions inhibit learning."

The Board amended Policy Statement 6121 in this fashion because (1) it rejected the idea that there was segregated education in Lansing; (2) it concluded that there is a vagueness about "better racial balance;" (3) it believed that better racial balance did not necessarily improve the educational opportunities of the school children.[83]

At the February 1 meeting, the Board adopted the following Resolution rescinding the June 29, 1972 plan:

> "Whereas, this Board of Education recognizes that there is a wide diversity of feelings in the community to the cluster plan as an educational experiment, and, whereas there is no conclusive research or evidence to support the contention that the cluster plan, as conceived and instituted does or will improve the educational achievement of the pupils affected, and, whereas the Board feels that the neighborhood family school is preferred for elementary students by the majority of the citizens of this school district, and, whereas the cooperation of parents is essential to the well being of any school system, and, whereas, the community's financial

[83] Proceedings on Proposed Stipulations, May 24, 1973, at 8-9.

> support is vital to the operation of the school district and, whereas there are no schools in this system where an ethnically-imbalanced student population has resulted from an act of de jure segregation; now, therefore, be it resolved that in accordance with the revised policy 6121, the cluster plan as adopted on June 29, 1972, be rescinded at the end of this school year (June 30, 1973). . . .

The Resolution went on to state that the attendance patterns which existed in 1971-72 in the kindergarten through sixth grade would be restored.[84]

The above table, "Clusters One and Two," indicates what the effect would have been on the schools involved in the two clusters if the new board had been allowed to rescind the plan at that time. The 1972-73 column, as noted, is the percentage of minority students in each cluster school with the clusters in effect. If the plan were effectively rescinded, it is reasonable to predict that these schools would have returned to approximately the percentage of minority students which prevailed in 1971-72. Likewise, a comparison of Columns for 1973-74, the first year Cluster Three was in effect, and the preceding year, 1972-73, indicates what would have happened if that cluster were not implemented.

On February 27, 1973, at a hearing before this court in the present case, the plaintiffs moved for a temporary restraining order, which was denied. Leave was granted to the plaintiffs to file a supplemental complaint, which they did immediately. In that complaint, the plaintiffs requested, among other things, a preliminary injunction (a) requiring the defendant to cease and desist from effectuating the revision of the Equal Educational Opportunity Policy of the Lansing School District and the nullification of the plan of June 29, 1972, to desegregate the Lansing School District; and (b), requiring the defendant to re-

[84] Proceedings on Proposed Stipulations, May 24, 1973, at 10-11.

institute the plan of June 29, 1972, to desegregate the Lansing School system and to take all steps necessarily attendant thereto.

On August 10, 1973, this court issued an opinion and order granting the preliminary injunctive relief requested. This ruling was affirmed by the United States Court of Appeals on August 29, 1973, NAACP v. Lansing Board of Education, 455 F.2d 569 (6th Cir. 1973). Cluster III was put into effect at the beginning of the 1973-74 school year, and all three clusters remain in effect at the present time pursuant to the terms of the injunction.

The Lansing Board of Education adopted the cluster plan on June 29, 1972, in order to meet what it reasonably conceived to be its constitutional obligation under the Michigan Constitution and laws and under the Fourteenth Amendment of the United States Constitution.[85]

Given the factual background, the Board reasonably concluded that Lansing elementary schools were *segregated*, that

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[85] Of course, individual board members also had their own motivations. Clarence Rosa, testifying about his reasons for voting for the cluster plan, stated: "I had looked back to see what had happened in the past 15-20 years, and where minorities had come from during that period of time, and I was convinced in my own mind we were going to make progress in the future just as we had made progress in the past; that my own children, or maybe more importantly my grandchildren, are going to be employed by people of another race, they are going to be working next to people of another race, they are going to be neighbors of somebody from another race, and that if that is going to happen—and I fully believe it will—it is going to happen comfortably only if you are comfortable with somebody from another race. I am not sure that I personally always am, but I think it is important that these young people do develop that kind of rapport where they can live with and work for and work with somebody of a different race than they are, and that the best way for them to—or one way, not necessarily the best—but a way we have a chance of achieving now is for them to associate in school, and therefore I felt it important that we desegregate our schools and arrive at that kind of brotherhood, I guess you would call it, for our children and our grandchildren. . . . Some people think it is morally important, some people think it is constitutionally important. I simply felt it was necessarily a part of a good education program." Tr. 79-80.

in the racially-mixed Lansing community segregated education and quality education were not compatible, and that further steps had to be taken to insure that the school system advanced toward the goal of true equality of educational opportunity.

The Fourteenth Amendment of the United States Constitution provides in Section 1 that "No State shall . . . *deny* to any person within its jurisdiction the equal protection of the laws." (Emphasis supplied.) In Brown I, decided in 1954, the Supreme Court found that "separate educational facilities" were "inherently unequal," and declared that state-sponsored segregation violated the Equal Protection Clause of the Fourteenth Amendment, Brown v. Board of Education of Topeka, 347 U.S. 483, 495, 98 L.Ed. 873, 74 S.Ct. 686. Subsequently, in Brown II, the Court ordered desegregation *"with all deliberate speed."* 349 U.S. 294, 301, 99 L.Ed. 1083, 75 S.Ct. 753 (1955). Conscious of their obligations under the United States Constitution, the people of the State of Michigan in 1963 adopted a new State Constitution containing the following provisions:[86]

> "ARTICLE VII. Education.
>
> "Encouragement of education. Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.
>
> "Free public elementary and secondary schools; discrimination. Section 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district *shall provide for* the education of its pupils without discrimination as to religion, creed, race, color or national origin."

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[86] The following parallels this court's previous discussion of the subject of the impact of Michigan law on desegregation suits in Oliver v. Kalamazoo Board of Education, 346 F. Supp. 766, 778-779 (W.D. Mich.), aff'd. 448 F.2d 635 (6th Cir. 1971).

The use of the word "shall" indicates that the provision is imperative and mandatory, not one which local officials may implement or not as they choose.[87]

In their explanatory address to the people required by the Legislature,[88] the Delegates to the Michigan Constitutional Convention stated, *"The anti-discrimination clause is placed in this* (Education) *section as a declaration which leaves no doubt as to where Michigan stands on this question."*[89] (Emphasis supplied.)

The Michigan Constitution of 1963 established a State Board of Education with broad authority over public education. Article VII, Section 3, of this Constitution provides:

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[87] "Shall" implies a word of command, and is generally imperative or mandatory. Black's Law Dictionary (4th Ed.), p. 1541. "Constitutional mandates are imperative," Fairbank v. United States, 181 U.S. 283, 291. That "shall" is equivalent to the word "must" is a familiar canon of statutory as well as constitutional construction. Generally, principles of statutory construction apply to construction of constitutions. Rhode Island v. Massachusetts, 12 Pet. (U.S.) 657; Jones v. City of Ypsilanti, 26 Mich. App. 574.

> "It is true our Constitution contains no provision to the effect that all its provisions are mandatory; but we deem this immaterial for the reason that this court has held before the adoption of the present Constitution that all the provisions of a constitution are mandatory; and the Constitution must be presumed to have been adopted with this understanding of its meaning. Since the adoption of the Constitution the court has steadily maintained the same rule." McCreary, Governor v. Spear, 156 Ky. 783. See, generally, 16 Am. Jur. 2d Constitutional Law, §§90-92.

[88] Act No. 8, April 17, 1961, Michigan Public Acts of 1961, at 8.

[89] Michigan Constitutional Convention of 1961-62, "What the Proposed New State Constitution Means to You," 77 (1962).

The forceful language of the Michigan Constitution, adopted nine years after Brown, is unambiguous in its proscription of discrimination in education. Though the court need not and does not rest its decision in this case solely on Michigan law, it alone, without reference to federal law, forbids segregation and requires integration, and would thus apparently be ample basis for the ruling of this court.

> *"Leadership and general supervision over all public education,* including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, *is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education,* including higher education, and shall advise the legislature as to the financial requirements in connection therewith." (Emphasis added.)

In addition, the Constitution created a Civil Rights Commission to secure the equal protection of the civil rights of the people of Michigan.

Article V, Section 29, of the 1963 Constitution of the State of Michigan, provides as follows:

> "Civil rights commission; members, term, duties, appropriation. Sec. 29. There is hereby established a civil rights commission which shall consist of eight persons, not more than four of whom shall be members of the same political party, who shall be appointed by the governor, by and with the advice and consent of the senate, for four-year terms not more than two of which shall expire in the same year. *It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination."*

Pursuant to their constitutional mandate, the State Board of Education of Michigan and the Michigan Civil Rights Commission declared the following:

> "Joint Policy Statement of the State Board of Education and Michigan Civil Rights Commission on Equality of Education Opportunity.

"In the field of public education, Michigan's Constitution and laws guarantee every citizen the right to equal educational opportunities without discrimination because of race, religion, color or national origin. Two departments of state government share responsibility for upholding this guarantee. The State Board of Education has a constitutional charge to provide leadership and general supervision over all public education, while the Michigan Civil Rights Commission is charged with securing and protecting the civil right to education.

"In addition to the declaration of public policy at the State level, the United States Supreme Court in the case of Brown v. Board of Education, ruled: 'that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.'

"The State Board of Education and the Michigan Civil Rights Commission hold that segregation of students in educational programs seriously interferes with the achievement of the equal opportunity guarantees of this state and that segregated schools fail to provide maximum opportunity for the full development of human resources in a democratic society.

"The State Board of Education and the Civil Rights Commission jointly pledge themselves to the full use of their powers in working for the complete elimination of existing racial segregation and discrimination in Michigan's public schools. It shall be the declared policy of the State Board of Education that in programs administered, supervised, or controlled by the Department of Education, every effort shall be made to prevent and to eliminate segregation of children and staff on account of race or color.

"While recognizing that racial imbalance in Michigan schools is closely related to residential segregation patterns,

the State Board of Education and the Civil Rights Commission propose that creative efforts by individual school districts are essential and can do much to reduce or eliminate segregation. Local school boards must consider the factor of racial balance along with other educational considerations in making decisions about selection of new school sites, expansion of present facilities, reorganization of school attendance districts, and the transfer of pupils from overcrowded facilities. Each of these situations presents an opportunity for integration.

"The State Board of Education and the Civil Rights Commission emphasize also the importance of democratic personnel practices in achieving integration. This requires making affirmative efforts to attract members of minority groups. Staff integration is a necessary objective to be considered by administrators in recruiting, assigning, and promoting personnel. Fair employment practices are not only required by law; they are educationally sound.

"The State Board of Education and the Civil Rights Commission further urge local school districts to select instructional materials which encourage respect for diversity of social experience through text and illustrations and reflect the contributions of minority group members to our history and culture. A number of criteria are enumerated in 'Guidelines for the Selection of Human Relations Content in Texbooks,' published by the Michigan Department of Education.

"The State Board of Education and the Civil Rights Commission believe that data must be collected periodically to show the racial composition of student bodies and personnel in all public schools, as a base line against which future progress can be measured. Both agencies will begin next month to assemble information on the present situation.

"To implement these policies the State Board of Education has assigned staff of the Department of Education to work cooperatively with the Civil Rights Commission and local school authorities for the purpose of achieving integration at all levels of school activity. The Michigan Civil Rights Commission also stands ready to assist local school boards in defining problem areas and moving affirmatively to achieve quality integrated education.

"Adopted and signed this twenty-third Day of April, 1966," and it is signed by all of the members of the State Board of Education and the Michigan Civil Rights Commission. The Chairman of the Civil Rights Commission at that time was The Honorable John Feikens, who is presently a United States District Court Judge in the Eastern District of Michigan.

This court finds that in adopting the desegregation plan of June 29, 1972, the Lansing Board of Education acted in accordance with the mandate of the 1963 Constitution of the State of Michigan and of the policy directives of the Michigan State Board of Education and the Michigan Civil Rights Commission.

The Lansing Board of Education is a state body, and as such is directly subject to the requirements of the Fourteenth Amendment of the United States Constitution.

In Brown I, supra, the Supreme Court, looking "to the effect of segregation itself on public education," 347 U.S. at 492, found that "separate educational facilities are inherently unequal." Id., at 495, and, when sponsored by the state, are a violation of the Equal Protection Clause of the Fourteenth Amendment. Id. Where a constitutional violation has been committed, the Supreme Court said in Brown II, supra, school boards had a constitutional duty to desegregate "with all deliberate speed," 349 U.S. at 301.

Since the Board of Education has immediate control over all Lansing public elementary schools, and since the schools were in actuality segregated, the Board could reasonably conclude, and in fact it did conclude, that it had a constitutional duty to enact a desegregation program. Since the Board was invested with immediate power to act, the conclusion would be the same whether or not the segregation was originally and exclusively the result of positive acts of the State. As Judge Damon Keith observed in Davis v. School District of Pontiac:

> "When the power to act is available, failure to take the necessary steps so as to negate or alleviate a situation which is harmful is as wrong as is the taking of affirmative steps to advance that situation. Sins of omission can be as serious as sins of commission." 309 F.Supp. 734, 741-42 (E.D. Mich 1970).

Nullification of the June 29, 1972 desegregation plan by the Lansing Board of Education would have the result of resegregating many of the schools involved in Clusters One, Two and Three, and of impeding and frustrating the implementation of a plan adopted to protect the constitutional rights of minority students under the Fourteenth Amendment.

The intent of the new board members to nullify the desegregation plan was evident long before the rescission vote. Some of the newly elected members had been leaders in the movement to recall those who had voted for the cluster plan, and the campaign in the election to fill the vacancies created by the recall made clear the opposition of the new members to the plan. Max Shunk, president of Citizens for Neighborhood Schools, a group organized to oppose implementation of the cluster plans, was elected president of the newly composed board. Board members candidly admitted in their trial testimony that they knew the effect of voting to rescind the plan would be to send Black chil-

dren from integrated schools back into their segregated schools.[90] Ruby Magee, who was reelected to the Board last April after having been appointed in February 1974 to fill a vacancy created when one of the new Board members died, testified that without a court order, she would vote to disband the clusters.[91]

[91] Tr. p. 592.

The new Board's rescission of the cluster plan was an intentional act whose obvious, foreseeable effect would be to resegregate the schools involved, with Black children being reassigned to the Black schools, and White children being reassigned to predominantly White schools.

If the rescission per se is not sufficient to constitute evidence of de jure segregation, it is highly probative of segregative intent. Keyes v. School District No. 1, 303 F.Supp. 289; 313 F.Supp. 61, aff'd. 445 F.2d 990, cert. denied as to this portion, 413 U.S. at 195 (1973); Bradley v. Milliken, 433 F.2d 897 (6th Cir. 1970); Oliver v. Kalamazoo Board of Education, supra.

The facts in Keyes and Oliver were nearly identical, and in both are very similar to those presently before this court. In Keyes, the defendant school board adopted three resolutions to desegregate Denver schools, a school board election was held, and before the desegregation plan could be implemented, the new board nullified the plan. While the trial court enjoined the rescission of these resolutions as to most of the schools after a finding that these schools had been intentionally segregated by the Denver school board, the court also permanently enjoined the rescission of the plan as to two schools, East High and Cole Junior High, which had not been previously segregated. The court found that the original plan would operate to prevent East from becoming segregated and to improve educational oppor-

[90] Testimony of Max Shunk, Tr. p. 411; testimony of Ray Hannula, Tr. p. 334.

tunities for Black students at Cole, and held that the frustration of these objectives by a rescission of the plan was in itself unconstitutional. Keyes, supra, 313 F.Supp. at 67 (D.C. Colo. 1970). The decree was approved by the Tenth Circuit on appeal, although the appellate court did not reach the question of the rescission, and as to this portion of the Tenth Circuit's action in the Denver case, the Supreme Court denied certiorari. However, it is significant that the Supreme Court noted with implied approval that the trial court had found the rescission of the desegregation plan as to Cole and East was itself an intentionally segregative act. 413 U.S. at 199, n. 10.

In Oliver, similarly, the Kalamazoo Board of Education adopted a desegregation plan on May 7, 1971, and then, after an election, rescinded the plan on July 6, 1971. This court found "that the July 6, 1971 resolution of the Kalamazoo Board of Education had a purpose and effect so profound that it alone would necessitate a judgment for plaintiffs in this cause." The court went on, however, to note that "this unconstitutional act also compounded defendants' many other constitutionally impermissible actions" and therefore did not rest its decision solely on this basis. Oliver, supra, 368 F.Supp. at 198. On appeal, the Sixth Circuit considered the rescission, "in light of prior cumulative constitutional violations by the school authorities, (as) further evidence of the Board's racially segregative purpose," and refrained from considering the revocation on its own. Oliver, supra, 508 F.2d at 186.

The Sixth Circuit has also addressed the issue of the validity of nullification of a desegregation plan in Bradley v. Milliken, 433 F.2d 897 (1970), and Brinkman v. Gilligan, 503 F.2d 684 (1974). See also Cincinnati Board of Education v. HEW, 396 F.Supp. 203 (S.D. Ohio, 1975); cf. Martin v. Evansville-Vandenburgh (Ind.), 347 F.Supp. 816 (S.D. Ind. 1972), and Higgins v. Board of Education of the City of Grand Rapids, 508 F. 2d 779, 789. In Bradley, the Sixth Circuit struck down as un-

constitutional a legislative attempt to nullify a plan of the Detroit school board to desegregate its high schools. Relying in its decision in part on the trial court's decision in Keyes, the court broadly and emphatically declared:

> "State action in any form, whether by statute, act of the executive department of a State or local government, or otherwise, will not be permitted to impede, delay or frustrate proceedings to protect the rights guaranteed to members of all races under the Fourteenth Amendment." Bradley, supra, at 902.

Oliver made clear that the Sixth Circuit's reliance on Keyes, which did not involve a legislature, meant that the Bradley doctrine must extend to actions of state agencies such as local school boards.

While a recent case again suggests that rescission alone might, in some unique and compelling circumstances be sufficient evidence to fix liability for de jure segregation, Cincinnati Board of Education v. HEW, supra, at 227-230, the prevailing view seems to be that rescission is normally only one indicium of segregative intent, and that for it to have independent significance, the rescinded plan must have been constitutionally necessary in the first place. Brinkman v. Gilligan, supra. This latter requirement effectively makes talk of "rescission alone" illusory. Finding rescission as an independent act will be superfluous if the legal significance of that act is predicated on the additional finding of earlier acts sufficiently violative of constitutional rights to affirmatively require a remedial plan. It is hypothetically possible that a rescinded plan could have been required by a set of circumstances which no longer would warrant a judicial remedy, but which did when the plan was adopted. However, realistically it is unlikely that the courts will ever be presented with a rescinded plan without other evidence of segregative activity. Whether this is because school boards seldom enact such plans

unnecessarily, or because evidence of racial prejudice exists as a social legacy in virtually every region, is a speculative matter which this court need not attempt to answer. But as in the riddle of the chicken and the egg, the court suspects the "true answer" is pragmatically irrelevant.

The rescission in this case seems to have more probative value than the similar actions dealt with in the cases discussed. The Lansing School Board which adopted the desegregation plan was not a "lame duck" group, as were the Dayton and Cincinnati school boards, Cincinnati Board of Education v. HEW, supra, at 228, and more significantly, the plan had actually been put into effect in Lansing elementary schools before it was rescinded, unlike the situations in Denver and Kalamazoo.

Thus, in the case at bar, the rescission itself stands out as an unmistakably intentional and effective act of segregation, which should alone justify a finding of remediable constitutional violation. But in addition, there is independent evidence of constitutional violations sufficient both to have made adoption of the June 29, 1972 desegregation plan an obligation of the Board, and to compel this court's intervention had there been no such plan.

One-Way Busing

For eight years before adoption and implementation of the cluster plan in 1972, the Lansing School District had been busing children to help end racial isolation of certain schools.[92] However, this integration effort was effectuated primarily by phasing out and closing predominantly Black schools, and transporting the pupils to outlying White schools. This "one way busing" program adopted by the Lansing Board of Education caused the burden of desegregating the school system to fall

[92] Def. Ex. 84.

disproportionately on Blacks. It also had the effect of keeping the "neighborhood school policy" a reality for Whites, while making it chimerical for Blacks.

> "Where . . . the closing of an apparently suitable Negro school and transfer of its pupils back and forth to white schools without similar arrangements for white pupils, is not absolutely or reasonably necessary under the particular circumstances, consideration must be given to the fairly obvious fact that such a plan places the burden of desegregation entirely upon one racial group.
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> "The minority children are placed in the position of what may be described as second-class pupils. White pupils, realizing that they are permitted to attend their own neighborhood schools as usual, may come to regard themselves as 'natives' and to resent the Negro children bussed into the white schools every school day as intruding 'foreigners'. It is in this respect that such a plan, when not reasonably required under the circumstances, becomes substantially discriminating in itself. This undesirable result will not be nearly so likely if the white children themselves realize that some of their number are also required to play the same role at Negro neighborhood schools."

Brice v. Landis, 314 F. Supp. 974, 978 (N.D. Cal. 1969). Cf. Moss v. Stamford Board of Education, 350 F. Supp. 879 (D. Conn. 1972); Spangler v. Pasadena City Board of Education, 311 F. Supp. 501, 524 (1970); Lee v. Macon County Board of Education, 448 F.2d 746, 753-54.

The one-way busing began as a response to overcrowded conditions in Black schools. Due to community objections to use of mobile units at Main Street School, the Board authorized transportation of children from that service area to Walnut Street School beginning in September 1964. Beginning in 1965, Black students were bused from Michigan Avenue School

to Elmhurst and Fairview, and from Kalamazoo to Forest. Also in 1965, Lincoln School was closed, and its students were bused to Kendon, Mt. Hope, and Reo Schools. As Kalamazoo School was phased out beginning in 1968, students were transported from it to Foster, Maple Hill, Wainright, Woodcreek, and Wexford schools. When Kalamazoo was closed in 1970, students from that service area were also bused to Sheridan Road, Attwood, Lewton, and Lyons schools. Each of these reassignments was considered part of an effort to end racial isolation in Lansing elementary schools.[93]

Over the years since 1964 until the advent of the cluster program, over 3,500 students were transported for purposes of integration in Lansing elementary schools. Nearly all of these were Black.[94] This one-way busing has continued even after the initiation of the cluster plan, with 340-350 students currently involved.[95] The distances involved in one-way busing were generally greater than those involved in the cluster plan.[96]

One-way busing derived its impetus from the Board's overall plan to phase out most Black schools.[97] One of the prime reasons why the Board found it necessary to close Lincoln and Kalamazoo schools was that it felt their shrinking enrollments made them economically unfeasible to operate.[98] The Board's decision to bus only Black students, ignoring the opportunity to bring White students into the schools with dwindling enroll-

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[96] Id., pp. 1-3.

[94] Def. Ex. 83, pp. 5-6; testimony of William Webb, Tr. 153, 157.

[95] Testimony of Webb, Tr 157.

[96] Id., 155.

[97] Testimony of Vernon Ebersole, Tr. 518-24; testimony of Kathryn Boucher, Tr. 602-04, 612-14; Pl. Ex. 5, pp. 9, 26-27. See also, "1968 Facility Planning Study," Pl. Ex. 38, p. 32.

[98] See pp. 37-38, supra.

ments and placing the burden of integration solely on Blacks, was discriminatory.

In fairness to this Board, the court observes that their actions instituting one-way busing should be considered in the context of their total efforts to desegregate Lansing schools. Former board president Clarence Rosa testified of their desire since the late 1950's to desegregate the school system, noting that they did in fact implement a plan for secondary schools. "But we were scared to death of this elementary situation," he testified. "We studied it and worked with it until we finally felt we had (a plan) that our community could live with (the cluster plan)."

Rosa testified that one-way busing was implemented at a time when many Black families from the West Side were being displaced due to government and commercial projects. He felt that if Black and White families came together in PTA's and similar situations, as a result of one-way busing, the uprooted families might move into White neighborhoods, creating naturally integrated areas. Unfortunately, he said, this did not occur to any great extent.[99]

Former Board member Kathryn Boucher testified that she felt her votes to close Lincoln and Kalamazoo schools were discriminatory, but that based on advice of community members, and on their own feelings as to what the community would accept, it was "the way to go" at that time.[100] She testified that although she recognized it as discriminatory at the time, she felt it was an important temporary step, and one which was acceptable to most of the Black community at the time.[101]

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[99] Tr. 81-82.

[100] Tr. pp. 603-04.

[101] Tr. 614.

These same Board members were the ones who several years later adopted the cluster plan for integrating the elementary schools, and a few years earlier had successfully defended a court suit attacking their plan to integrate the secondary schools. Seen on this continuum, then, their decisions instituting one-way busing cannot be said to have been motivated by a pernicious or invidious intent. Yet while their motivations may have been honorable, and their options circumscribed by their perceptions of political acceptability, the natural and foreseeable effects of their acts were nonetheless clearly discriminatory. Moreover, the Lansing Board of Education has maintained this substantially discriminatory and constitutionally impermissible practice for over a decade.

It should be noted that this discriminatory effect did not go unchallenged in the Black community at the time. A witness called by defendants, John Lewis, is a Black man who served as president of the Main Street PTA during the time one-way busing was in effect there. He testified that he and the PTA Board felt that despite the excellent staff of Main Street School, their children could not get a quality education in a segregated environment, and further that one-way busing was an affront. "We felt that our school was an excellent school, both the structure and the staff that we had there, and we felt kind of being slapped in the face when it was being talked about taking our kids out from our school and filtering them in at some of the other schools, but yet still no one out of the other schools were being brought into Main Street, and this highly upset us."[102] Lewis testified that he communicated these complaints to the Board of Education.

When the new Board voted in February 1973 to rescind the cluster plan, it left intact the practice of one-way busing. While the actions of the old Board can be seen on a continuum as moving toward spreading the burden of desegregation equally

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[102] Tr. 302-03.

between Black and White students, the vote of the new Board clearly manifests a willful intent to place it solely on Black children. The court finds that the Board knew of and intended this effect.[103]

Site Selection

One final issue demands the court's attention as it reviews indicia of de jure segregation on the part of the defendant school board. In a school district professing a "neighborhood school policy", citizens on the West Side were justifiably anxious to have a new elementary facility as the Board moved to close Lincoln, Kalamazoo, and Michigan schools. There is no reason why this new facility could be obtained only at the price of foregoing integrated education, yet the present Board of Education has evinced a clear intent to operate the new school on a segregated basis.

In Keyes, supra, the Supreme Court discussed the discriminatory effect of "the practice of building a school . . . to a certain size and in a certain location, with conscious knowledge that it would be a segregated school." 413 U.S. at 201-202. Other courts, too, have said that situating schools, "under the guise of pursuing a neighborhood school policy . . . so that these schools were segregated on the very day they opened their doors," is "positive action to aggravate segregation." Soria v. Oxnard School District Board of Trustees, 386 F. Supp. 539, 543 (C.D. Cal. 1969). Cf. Kelly v. Guinn, 456 F.2d 100, 106 (9th Cir. 1972).

Citizen group proposals for the new West Side facility made clear that though the area is substantially Black, the desire to place an elementary school on the West Side did not indicate any lessening of the commitment to integrated education. The

[103] See Testimony of Ray Hannula, Tr. 333-34.

West Side Educational Facilities Ad Hoc Committee recommended:

> "That the new school facility constructed within the River Island area become part of a districtwide desegregation and equal educational opportunity program immemediately following its completion and subsequent occupancy."[104]

Remarks of Board members at their June 29, 1972 meeting show that they were aware of at least one Michigan federal court decision indicating that no new facilities should be built which continued a segregated condition.[105] The cluster plan resolution adopted that night, included the following provisions:

> "(2) Begin immediately to develop educational plans and specifications for a new west-side elementary school facility with the goal of completing construction before September, 1975, and authorize the Superintendent to initiate a site search and a source of funding for this facility;
> * * *
>
> "(5) Beginning in September, 1975, implement other cluster-school plans as necessary to eliminate any racial imbalance then existing; included in the plans shall be the opening of the new west-side elementary facility as a basis for cluster-school plan development."

When this court enjoined rescission of the cluster plan, it also ordered reinstatement and implementation of these ancillary provisions. However, when the site was selected for the new school (to be called Vivian Riddle Elementary School), it was in the most heavily Black area of the city, and no plan

[104] Pl. Ex. 6, p. E-1; Cf. Report of the 1972 Citizens' Advisory Committee on Educational Opportunity," Pl. Ex. 1, p. 8.

[105] Pl. Ex. 8, p. 7.

to guarantee integration was forthcoming. In fact, not until October 1975, after forcing the court to consider enjoining construction of the facility, did the Board address the matter. Even then, it adopted a transparently inadequate "plan" which would have merely used the new school, with a projected capacity of well over 500, as a replacement for Michigan Avenue School, whose enrollment is about 200.

In 20 USC §1713, Congress has declared a priority of remedies for segregation. Before transportation of students can be considered, the court is required to examine other alternatives, including construction of facilities, to remedy the segregative conditions. Cognizant of obligations under this statute, and believing that if a final determination of segregation liability were made in this case construction of the facility would unduly limit the options the court is mandated to consider, the court on September 22, 1975 ordered the defendant to show cause why construction should not be enjoined. At the show cause hearing, both parties agreed that the new facility could not open as a desegregated school without busing, but both agreed for their own reasons that construction should not be enjoined. Attorney for the defendants argued that the school board had no intention of opening Vivian Riddle School as a segregated facility, and the court declined to issue an injunction.

However, at trial testimony of the Board members themselves indicated that the contrary was true. A majority of the Board members testified that if they could they would operate Vivian Riddle Elementary School strictly as a neighborhood school, knowing this meant its enrollment would be over 90% minority.[106] On the basis of this testimony showing that, absent a court order, there was a significant likelihood the school would be operated as a segregated facility, the court on October 17, 1975 enjoined further construction, and on October 22 appointed an expert to assist in resolving the matter. The court's expert, Dr. Michael Stolee, Dean of the School of Education at the University of Wisconsin, at Milwaukee, met with the parties and exhaustively considered every option. On October 26, he reported to the parties and the court that each of the alternatives to building the new school at the proposed site was unsatisfactory for reasons he outlined. He concluded, and recommended to the court, that construction be resumed, with the understanding that transportation of students would be required to desegregate the facility if the court found liability. He further concluded that if liability were found, the new facility is designed with enough flexibility to be adapted to a viable remedy plan. On October 27, the court lifted its injunction. It is expected that the new school will be ready for use by Fall 1976.

[106] See testimony of Board members Ebersole, Tr. 559; Hess, Tr. 431-32; Magee, Tr. 592; Shunk, Tr. 420; and Walsh, Tr. 577.

The court finds that the Board's decision to place the new facility in an almost entirely Black neighborhood, coupled with its manifest intent to operate it strictly as a neighborhood school, thus guaranteeing a student body over 90% minority, is significant evidence of de jure segregation. It is a deliberate act, adhered to in spite of the court's exhortations during the course of the litigation that the Board voluntarily resolve the matter by submitting a meaningful plan. Seen as part of a pattern of actions by this Board, it proves segregative intent beyond question.

Summary Conclusions

The following is a brief summary of the court's findings and conclusions. This recapituation is not all-inclusive, and is not intended to limit, replace or modify its previously stated findings.

During the past 25 years, Lansing elementary schools have to a substantial degree been segregated, in the sense of being racially identifiable as "Black schools" or "White schools."

The Supreme Court in Swann defined "de facto segregation" as the existence of racial imbalance in the schools, but with no showing that this was brought about by discriminatory action of state authorities. Defendants in this case have argued that the disproportionate racial concentrations in Lansing elementary schools are simply the result of a consistently and neutrally applied neighborhood school policy. For purposes of this case, the court has assumed that the plaintiffs must prove de jure segregation, i.e., that the defendants have intentionally acted or failed to act in ways which have created or maintained segregative conditions. People are pressured to intend the natural, probable and foreseeable consequences of their acts. Thus even practices which appear neutral may be discriminatory in their effects.

Lansing's neighborhood school policy is not only discriminatory in effect, but also has not been administered in a racially neutral manner since the late 1950's. Among the matters within the control of the school board are attendance zones. While the Board insists that it follows a "neighborhood" school policy, it must be emphasized that generally the Board defines the "neighborhood" when it draws the boundaries.

The boundaries established under the neighborhood school policy in the Main-Michigan-Verlinden area were deliberately frozen in the late 1950's, after previous adjustments at Main, in order to contain Blacks in a few schools and avoid integration. The large number of special transfers to Verlinden and the relatively short distance involved suggest that the distance from Main Street and Michigan Avenue School service areas to Verlinden was not in fact so great as to preclude boundary adjustments in order to achieve a more even racial distribution without the necessity of resorting to transportation of students by bus. The boundary changes which the Board did make in 1957 had the foreseeable effect of increasing the racial identifiability of Michigan Avenue School and continuing the racial

isolation of White Verlinden School. Further, although the Board had repeated opportunities over the years to re-examine its attendance zone boundaries as adjacent areas were annexed, it failed to reorganize service areas to eliminate the discriminatory racial isolation.

Similarly, the Board sanctioned special transfers from Main and Michigan schools with the conscious purpose and obvious effect of allowing White students to escape from their neighborhood schools when these were predominantly Black, thus accelerating the trend towards an even more severe racial concentration. Through the use of mobile units, too, the Board continued segregation conditions at Main Street and ignored or postponed opportunities to affimatively promote integration.

The existence of relatively inferior physical facilities at minority schools is another indicium of the defendants' segregative purpose. Lansing's predominantly Black schools generally are located on smaller sites, with more pupils per acre of playground space than most White schools. While physical conditions were allowed to significantly deteriorate at Michigan Avenue School, other Black schools were phased out and eventually closed. Lincoln School was closed in 1965, and Kalamazoo Street School was closed in 1970. Students from these attendance areas, nearly all Black, were transported to predominantly White schools around the district. One of the primary reasons these schools were closed is that their enrollments were dwindling, because such government and commercial projects as the I-496 construction and Oldsmobile expansion removed many family dwellings. Instead of filling the classroom vacancies and simultaneously integrating the schools by bringing White students in, the Board chose to close the schools and bus Black students out, denying them the opportunity to attend their neighborhood school.

This not only indicates that the physical facilities of the Black schools were relatively inferior, but also that the Board

at that time was content to place the burden of integration efforts solely on Black children. The School Board has maintained this substantially discriminatory and constitutionally impermissible policy of one-way busing of Black students for over a decade.

Some of the Board's most recent actions leave no doubt that it still intends to use the neighborhood school policy to achieve segregation. The Board approved construction of the new Vivian Riddle Elementary School at a site located in the most heavily Black area of Lansing. While the desire of west side citizens to have a new school in their community is well justified in light of the closings of Lincoln and Kalamazoo Street Schools and the sale of Michigan Avenue School to the state, there is no reason why this new facility can be obtained only at the price of foregoing integrated education.

However, a majority of the present Board members testified at the trial that they would, if they could, operate Vivian Riddle strictly as a neighborhood school, knowing that this means it would have over 90% minority enrollment. Moreover, the school has been built with a capacity large enough to house students from the defunct Lincoln and Kalamazoo service areas. Thus children from these areas now attending integrated, but predominantly White, schools would be relegated to a Black segregated school and the White receiving schools would become resegregated.

From the foregoing it is clear that the Lansing Board of Education since the 1950's has followed a purposeful pattern of racial discrimination by intentionally creating and maintaining segregated schools in Lansing. The Board thus denied Lansing children the opportunity for non-segregated education and denied them the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution.

Testimonial evidence was presented showing that Black applicants in the early 1950's were told that the district was not hiring Blacks as teachers, or that it already had its quota. Together with statistics showing that the district has not hired minority personnel in proportion to the percentage of its minority students, this gave rise to a presumption of unlawful discrimination in hiring practices. However, defendants have rebutted this presumption with evidence of diligent recruiting efforts and the absence of discrimination in recent years. Thus the court makes no finding of such employment discrimination.

However, the Board's practice of assigning Black teachers disproportionately to Black schools accentuated the racial identifiability of these schools, and was itself unconstitutional discrimination.

The adoption of the June 29, 1972 desegregation plan was intended to be and was in fact an implementation of the Fourteenth Amendment of the United States Constitution, the mandatory antidiscrimination clauses of the Michigan Constitution of 1963, Art. I, Sec. 2, and Art. VIII, Sec. 2, which were themselves implementations of the Fourteenth Amendment, and the 1966 Joint Policy Statement of the Michigan Civil Rights Commission and the State Board of Education. Apart from the question of whether the Lansing Board was constitutionally required to adopt the June 29 plan or something substantially the same, the Board's actions were "proceedings to protect the rights guaranteed to members of all races under the Fourteenth Amendment." Bradley, supra, 433 F.2d at 902.

Because the Lansing Board of Education, by its intentional acts and failures to act contributed substantially to the creation and maintenance of segregated schools in Lansing, and because its discrimination against Black children existed before and at the time of the June 29, 1972 action to desegregate the dual school system, the June 29 Board was perform-

ing its constitutional duty by the creation and implementation of the June 29 integration plan.

Insofar as the desegreation was constitutionally required the Lansing Board was fulfilling its constitutional mandate to act with "all deliberate speed" to put an end to segregation in its schools. Brown II, supra.

The Lansing Board of Education's February 1, 1973 vote to rescind the cluster desegregation plan was intended to and did have the effect of resegregating the elementary schools.

The February 1, 1973 resolution was itself an act of de jure segregation committed by the Lansing Board of Education, since this action literally transformed an integrated system into a racially segregated system in dire contravention of the United States Constitution and the rulings of the Supreme Court in Brown I, supra; Bradley, supra, 484 F.2d 215, at 254; Green, supra, 391 U.S. at 439-41.

The Lansing Board of Education's February 1, 1973 resolution compounded the effects of the Board's earlier constitutionally impermissible actions.

The segregated conditions which existed in Lansing before the adoption of the June 29, 1972 desegregation plan were vestiges of slavery.

The entire content of this opinion embodies the findings of fact and conclusions of law in lieu of those required by Fed. R. Civ. P. 52.

V

"Transportation" for Regular, Parochial and Special Education Purposes—"Busing" for Integration

The June 29 desegregation plan, voluntarily adopted by the Lansing Board of Education, necessarily involved some transportation of students to fulfill its goals of providing equal educational opportunity for all children. Attorneys for both parties in this case have agreed that, at least in some respects, pupil transportation will be the only effective tool to desegregate the Lansing Public Schools in the short run.[107]

While recent statutory enactments counsel courts to first consider other alternatives before ordering pupil transportation, 20 USC§1713 (1975 Supp.), Congress specifically refused to attempt to modify or diminish the court's authority to remedy Constitutional violations. 20 USC §1702(b) (1975 Supp.). When a remedy is imposed it is not simply to achieve a racial balance in the schools, but to enforce Constitutional rights and correct constitutional wrongs.

This court has previously recognized that the issue of pupil transportation is often exaggerated and distorted by the opponents of integration. Oliver, supra, 368 F.Supp. at 199 (1973), affd 508 F.2d 178, cert. denied, 421 U.S. 963 (1975). What was said there bears repeating.

> To keep the matter in its proper factual perspective, it is appropriate to review the historical and contemporary role of student transportation in our country's educational system.
>
> Chief Justice Burger, in his opinion for the Court in Swann, supra, declared:
>
> > "Bus transportation has been an integral part of the public education system for years, and was perhaps the single most important factor in the transition from the one-room schoolhouse to the consolidated school.
> >
> > . . .

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107 Transcript of proceedings on order to Show Cause, September 30, 1975.

> *"The importance of bus transportation as a normal and accepted tool for educational policy is readily discernible. . . ."* 402 U.S. at 29, 91 S.Ct. at 1282.

In his partial concurrence in Keyes, supra, Justice Powell observed, "The transporting of school children is as old as public education, and in rural and some suburban settings it is as indispensable as the providing of books." 413 U.S. at 243, 93 S.Ct. at 2714.

Furthermore, as the Fifth Circuit observed, "Private schools do not disdain bussing." United States v. Texas Education Agency, supra, 467 F.2d at 874. States may provide transportation for parochial school students if it does so for public students. Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947). (Emphasis supplied.)

All authorities agree that the proportion of public school children who are transported is substantial. Chief Justice Burger put the figure at approximately 39%, or eighteen million, in 1969-70. Swann, supra, 402 U.S. at 29, 91 S.Ct. 1267. Mr. Justice Powell estimated that "half of all American children ride buses to school *for reasons unrelated to integration,* Keyes, supra, 413 U.S. at 243, 93 S.Ct. at 2714. (Emphasis supplied.) And, Justice Powell noted, Senator Abraham Ribicoff of Connecticut has put the figure at *two-thirds.* Id. at n. 22.

The important thing is that, nationally, nearly all transportation of students has nothing to do with desegregation. It has been estimated that only three percent of all school transportation is for purposes of integration.

* * *

The transportation of students to schools some distance away is not entirely without some burden to students and

parents. When a child lives some distance from and must be transported to school, his ability to participate in extracurricular activities is diminished. Similarly, it may be more difficult in some instances for parents to participate in school-related activities. * * *

Those who oppose transportation of students for purposes of integration cite these reasons. However, it is inconsistent for people to demand, or at least accept the massive transportation of students for all sorts of reasons except integration. Transportation for purposes other than integration has all the inconveniences and disadvantages of transportation for purposes of integration. Since all transportation of students is on a par in this respect the objections to transportation for purposes of integration must be racially related.

> Of course, all else being equal, the concept of maintaining schools within walking distance seems convenient to those affected and therefore attractive. However, all things are not equal in a district which has a history of de jure segregation, Swann, supra, 402 U.S. at 28, 91 S.Ct. 1267, or in a district which has raised expectations of equal education by proceedings to protect rights guaranteed by the Fourteenth Amendment, Bradley, supra, 433 F.2d at 902, 368 F.Supp. at 199-200. (Emphasis supplied.)

It was this same issue of pupil transportation which attracted the greatest acrimony to school consolidation in the earlier part of this century.[108] Many of the objections to present day busing are not unlike the objections which were raised in opposi-

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[108] Paul Smith, "Pupil Transportation: A Brief History," 11 *Inequality In Education,* 6 (March 1972). (Hereinafter Smith.)

tion to "forced busing" for the purpose of consolidating school districts.[109] Some of the typical objections then were:[110]

— uncertainty about expense

— loss of home school

— disbelief that pupils can be transported comfortably and safely

— children would have to leave home too early and could not get back in time to do chores

— the evil influences could be much greater, particularly if children are transported to village or town schools.

— consolidation destroys community life.

These can be seen to be similar to those fears, myths, and objections reported by the United States Commission on Civil Rights in a May 1972 publication, "Your Child and Busing." A partial list of those fears and objections would include:

— Buses are not safe

— Busing is too expensive

— It requires long hours away from home, reducing time

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[109] "Busing" alone is actually incorrect terminology since the means of transportation were and are varied and have included horse drawn wagons, railroads, trolleys, taxis, steamboats, sleighs and dog sleds, boats, and even a cable basket. Smith, at 13-14.

In addition, it must be recognized that in a system of compulsory education, almost all busing is "forced." (Michigan does require school attendance, MCL §340.731). Of course, as an alternative to pupil transportation, there is precedent for mandatory boarding schools—an alternative which many, I suspect, would feel is harsher than busing. Smith, at 13; Cf. MCL §388.1154.

[110] Id at 6.

available for play and study and prevents participation in extra-curricular activities.[111]

— there is a right to attend neighborhood schools.

Those fears which can be tested objectively have been shown to be unsupported. For example, busing safety is generally very high. The accident and injury rate is usually higher for children who walk to school because of other temptations along the route.[112] The Lansing School District has recognized that very fact in its own past and present policies which, in the interest of safety, allow for busing elementary school students living within the usual 1½ mile walking distance.[113]

While buses and pupil transportation obviously are not without expense, the cost, in relation to school budgets as a whole, is usually quite small.[114] Even after the entry of the preliminary injunction in this case, the cost of transportation for integration for the 1975-76 school year[115] is less than 10% of the total transportation cost of the Lansing School District, which in turn is only 3.3% of the total operations expenditures for the year.[116]

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[111] Extracurricular activities would seem to be more significant where junior and senior high schools are involved. This case concerns only elementary schools.

[112] Id. at 19.

[113] Def. Ex. 83.

[114] Smith, supra, at 16.

[115] The integration plans are both the ones implemented as the result of this Court's injunction and as the result of self-imposed plans.

[116] Based on Def. Ex. 83 it appears that for the eleven-year period beginning in 1965-66 and ending with the present school year, the cost of transportation for the purpose of integration has averaged

The Supreme Court in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 30-31 (1971), recognized some validity to certain objections to transportation/busing. The Court said that the time or distance of travel should not be "so great as to either risk the health of the children or significantly impinge on the educational process." But what is excessive? A 1938 survey of superintendents recommended only a 12.25 mile travel distance for elementary school children.[117] In addition, since 1940, an overall one-hour one-way standard has generally been recognized as acceptable,[118] though of course schools should always seek to minimize travel time. Finally, it is not unwarranted to conclude that transportation/busing itself is neutral physically, psychologically, and educationally.[119]

Subjective fears and objections to pupil transportation, which as noted above were the most acrimonious aspect of opposition

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13.38% of the total cost of transportation and .31% of the total cost of operation of the district. The percentages for each year were:

Year	*Percent of total transportation*	*Percent of total operation*
1965-66	11.37	.21
1966-67	19.66	.35
1967-68	11.42	.21
1968-69	14.43	.29
1969-70	11.02	.30
1970-71	6.38	.13
1971-72	9.91	.21
1972-73	20.62	.47
1973-74	20.48	.43
1974-75	14.77	.39
1975-76	9.62	.31

[117] Smith, at 19-20.

[118] Smith, at 17.

[119] Robert Coles, "Does Busing Harm Children?", 11 *Inequality in Education* 25 (March 1972); but see 20 USC §1702 (1975 Supp.)

to school consolidations, appear to dissipate substantially over time.[120] There is no reason to believe that the same will not occur with respect to transportation for the purpose of desegregation. In fact, the evidence in this case supports that conclusion. To the extent it does not dissipate, the hostility is more likely evidence of an opposition to desegregation than to busing.

Michigan, and Lansing, have long utilized pupil transportation. While Massachusetts led the nation in 1869, in enacting legislation to aid in pupil transportation, Michigan followed suit in 1903,[121] and has continued to expand its aid of pupil transportation even to including private school pupils also.[122]

In the Lansing area, while the Lansing School District, itself did not offer pupil transportation for attendance until the late 1950's students had long been transported into its secondary schools by the neighboring school districts. When these districts consolidated with Lansing, Lansing took over the busing operations. And since that time, Lansing has greatly expanded its pupil transportation program. Lansing has for some time now provided transportation to elementary school pupils who live too far from school for walking or for whom busing will allow significantly safer access to school.[123] As can be seen, desegregation is just one of several legitimate purposes for which the tool of busing is used.

Objections to busing apply similarly to all and it cannot be said that achievement of integration is a less important goal than the others. Because integration transportation is to right injustices and constitutional wrongs, it justifies the highest priority.

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[120] Smith, at 19.

[121] Smith, at 12-13.

[122] Def. Ex. 83; MCL §388.1177.

[123] Def. Ex. 38.

In a very real sense, transportation/busing to integrate schools is itself a compromise. It provides equal educational opportunities for all public school children, but it does not prevent parents who so desire from raising their children in otherwise segregated environments. The court has the power to remedy unconstitutional conditions existing in public schools by insuring to all American children the equal protection of the law, but it cannot order people to be charitable to one another in their daily affairs. The law provides impetus, sets limits, corrects abuses—it is an external conscience. But the change of heart must come from within. That is why desegregating the schools our young children attend, whatever its immediate gains, is primarily a reflection of our hope for the future.

Justice Harlan, in 1896, wrote in his famous dissent in Plessy v. Ferguson:

> "The destinies of the two races in this country are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. . . . The sure guaranty of the peace and security of each race is the clear, distinct, unconditional recognition by our governments, national and state, of every right that inheres in civil freedom, and the equality before the law of all citizens of the United States without regard to race." 163 U.S. 537, 560.

This court has noted during these proceedings that among the most fundamental values the Constitution of the United States was established to protect are justice and domestic tranquility. Justice precedes domestic tranquality in the Preamble to the Constitution, for without justice, there can be no domestic tranquility. Moreover, we cannot understand what justice means if we fail to realize that the source of just activities springs from the two great commandments—that we love God with our whole heart and soul, and that we love our neighbor

in the same manner. Love of our fellow human beings is an essential element of justice: without it we cannot hope to achieve peace in our great land.

It is appropriate to note here the concluding statement of the United States Commission on Civil Rights, in its report mentioned above:

> For 50 years, the school bus has been a friendly figure —an accepted and vital part of the American educational picture. Without the bus, millions of Ameircans would have had to rely on the limited educational offerings of one-room schools. Some might never have completed school.
>
> Now, because it is being used to carry out desegregation plans, some suddenly have cast the familiar yellow bus as a villain. It is a reversal of roles that cannot but trouble thoughtful Americans.
>
> *The basic issue is not busing but integration.* Either we continue moving toward the goal of integration, or we reject it and hold onto the separate schooling outlawed in the *Brown* decision. In rejecting busing in the racially segregated situation in which most Americans live today, we also reject integration. (Emphasis supplied.)

Instead of resisting busing, the Nation should seek to follow the example of some 30 seventh graders at Jefferson Junior High School in Pontiac. After buses were burned, schools were picketed, and children were called insulting names, the seventh graders decided to come to the defense of busing and integration in that city. They formed a biracial organization, called "The Group," which travels from school to school, putting on skits and conducting other activities in behalf of racial harmony in Pontiac. Their slogan:

> "We Can Make It Work."

It is a motto worthy of parents, educators, all branches of government, and the Nation as a whole.

VI.

The plaintiffs in this case have proven the existence of a dual school system in Lansing:

> "This is not a case . . . where a statutory dual system ever existed. Nevertheless, where plaintiffs prove that the school authorities have carried out a systematic program of segregation affecting a substantial portion of the students, schools, teachers, and facilities within the school system, it is only common sense to conclude that there exists a predicate for a finding of the existence of a dual school system." Keyes, supra, 413 U.S. at 201-02.

Thus the defendant Lansing Board of Education is clearly charged with "the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Green, supra, 391 U.S. at 437-38. The Court in Green admonished that "the time for mere 'deliberate speed' has run out . . . The burden on a school board today is to come forward with a plan that promises realistically to work and promises realistically to work *now*." (Emphasis in original.)

Although the June 29, 1972 desegregation plan was somewhat modest, it was *voluntarily* adoped by responsible Lansing school authorities in a bona fide effort to bring substantial equality of opportunity to all children in Lansing as mandated by the Constitution. The cluster plan, moreover, was the result of several years of public discussion of the problem of segregated schools in Lansing, and its adoption was immediately preceded by intensive exploration by the Board and debate by the public.

Since the Lansing authorities were responsibly performing their constitutional duties when they adopted the June 29 plan, the court believes that it may well serve as the basis for an appropriate remedy in this case. However, the passage of three and one-half years since its adoption, as well as testimony during trial about revisions which may be desirable, make it advisable that the question of remedies be left open at this time.

As in any school desegregation case where violation of the Fourteenth Amendment has been found, the primary responsibility for providing a remedy lies with school authorities. The present School Board had numerous opportunities throughout the course of this case to terminate the litigation by voluntarily integrating the elementary schools. Instead of resolving the matter themselves, the Board members chose to pursue the litigation and force the court to decide the hard issues involved.

Their decision to continue this action may have been based upon the same erroneous premise which underlay their rescission resolution, viz., "there are no schools in this system where an ethnically-imbalanced student population has resulted from an act of de jure segregation." Since this premise has been demonstrated false, it is reasonable to expect that the Board would want to re-examine its conclusion that the plan should be rescinded. Now that the Board's responsibility for the segregated conditions of Lansing elementary schools is established beyond question, the court hopes that it will work diligently with the school administration to devise a plan which will eliminate all vestiges of illegal discrimination from the Lansing School District.

Such plans must consider many variables, and are best framed by those intimately familiar with the daily operations of the school system. The court may refer plans submitted by the parties to an expert for evaluation. If necessary, the expert will also be asked to revise or supplement the proposed plans.

The proposal should originate, however, with the Lansing school officials or citizens. The court has regularly reminded the parties that the primary obligation of administering the school system lies with the local school board; federal courts enter the picture only when the local board fails to carry out its obligations.

Dated: December 19, 1975.

/s/Noel P. Fox
Chief District Judge

APPENDIX A

CONSTITUTION OF UNITED STATES AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states.

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The relevant portion of this section is: "No state shall * * * deny to any person within its jurisdiction the equal protection of the law." This language is plain, simple, English, and ought to be easily interpreted.

The Supreme Court in Brown v. Board of Education, 347 U.S. 483, 490, stated:

> In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the

Court interpreted it as proscribing all state-imposed discriminations against the Negro race.[5]

[5] *Slaughter-House Cases*, 16 Wall. 36, 67-72 (1873); *Strauder v. West Virginia*, 100 U.S. 303, 307-308 (1880);

> "It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored,—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race."

See also *Virginia v. Rives*, 100 U.S. 313, 318 (1880); *Ex parte Virginia*, 100 U.S. 339, 344-345 (1880).

The following are excerpts from cases cited in Brown: Ex parte Virginia explained the purpose of the Amendment:

> One great purpose of these amendments was to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood, into perfect equality of civil rights with all other persons within the jurisdiction of the States. They were intended to take away all possibility of oppression by law because of race

or color. They were intended to be, what they really are, limitations of the power of the States and enlargements of the power of Congress. They are to some extent declaratory of rights, and though in form prohibitions, they imply immunities, * * *. Supra, 100 U.S. at 344-345.

Strauder continues:

"This [the Fourteenth Amendment] is one of a series of constitutional provisions having a common purpose; namely, securing to a race recently emancipated, a race that through many generations had been held in slavery, all the civli rights that the superior race enjoy. The true spirit and meaning of the amendments, as we said in the *Slaughter-House Cases* (16 Wall. 36), cannot be understood without keeping in view the history of the times when they were adopted, and the general objects they plainly sought to accomplish. At the time when they were incorporated into the Constitution, it required little knowledge of human nature to anticipate that those who had long been regarded as an inferior and subject race would, when suddenly raised to the rank of citizenship, be looked upon with jealousy and positive dislike, and that State laws might be enacted or enforced to perpetuate the distinctions that had before existed. Discriminations against them had been habitual. It was well known that in some States laws making such discriminations then existed, and others might well be expected. The colored race, as a race, was abject and ignorant, and in that condition was unfitted to command the respect of those who had superior intelligence. Their training had left them mere children, and as such they needed the protection which a wise government extends to those who are unable to protect themselves. They especially needed protection against unfriendly action in the States where they were resident. It was in view of these considerations the Fourteenth Amendment was framed

and adopted. It was designed to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give to that race the protection of the general government, in that enjoyment, whenever it should be denied by the States. It not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any State the power to withhold from them the equal protection of the laws, and authorized Congress to enforce its provisions by appropriate legislation. To quote the language used by us in the *Slaughter-Houses Cases*, "No one can fail to be impressed with the impressed with the one pervading purpose found in all the amendments, lying at the foundation of each, and without which none of them would have been suggested,—we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over them." * * *

If this is the spirit and meaning of the amendment, whether it means more or not, it is to be construed liberally, to carry out the purposes of its framers. * * *

* * * If in those States where the colored people constitute a majority of the entire population a law should be enacted excluding all white men from jury service, thus denying to them the privilege of participating equally with the blacks in the administration of justice, we apprehend no one would be heard to claim that it would not be a denial to white men of the equal protection of the laws. Nor if a law should be passed excluding all naturalized Celtic Irishmen, would there be any doubt of its inconsistency with the spirit of the amendment. Supra, 100 U.S. at 306.308.

APPENDIX B

Bradley, et al. v. Milliken, et al., 484 F.2d 215, 245-249 (1973).

A. *Status of School Districts under Michigan Law*

This conclusion is supported by the status of school districts under Michigan law and by the historical control exercised over local school districts by the legislature of Michigan and by State agencies and officials, which we now discuss.

[5] As held by the District Court, it is well established under the Constitution and laws of Michigan that the public school system is a State function and that local school districts are instrumentalities of the State created for administrative convenience.

The Northwest Ordinance of 1787 governing the Territory of Michigan provided:

> "Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Art. III.

With this genisis, Michigan's four Constitutions have clearly established that the public school system in that state is solely a State function. The Constitution of 1835 in Article X, Section 3, provided, in part: "The legislature shall provide for a system of common schools . . ." The Constitution of 1850, Article XIII, Section 4, provided, in part: "The legislature shall . . . provide for and establish a system of primary schools . . ." Section 1 of the same Article provided, ". . . the Superintendent of Public Instruction shall have general supervision of public instruction . . ."

The Constitution of 1908 in Article XI, Section 2, provided that the Superintendent of Public Instruction "shall have general supervision of public instruction in the State." Article XI, Section 9, provided, in part as follows:

> "The legislature shall continue a system of primary schools, whereby every school district in the State shall provide for the education of pupils without charge for tuition . . ."

The Constitution of 1963, the present Constitution of the State of Michigan, in Article VIII, Section 2, provides, in part as follows:

> "The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law."

In interpreting the above educational provisions of the Constitution of 1850, the Michigan Supreme Court stated:

"The school district is a state agency. Moreover, it is of legislative creation . . ." Attorney General v. Lowrey, 131 Mich. 639, 644, 92 N.W. 289, 290 (1902). Again, interpreting the Constitution of 1850, the Supreme Court of Michigan in Attorney General v. Detroit Board of Education, 154 Mich. 584, 590, 118 N.W. 606, 609 (1908), adopted lower court language which read:

> "Education in Michigan belongs to the state. It is no part of the local self-government inherent in the township or municipality, except so far as the Legislature may choose to make it such. The Constitution has turned the whole subject over to the Legislature . . ."

The Supreme Court of Michigan interpreted Article XI, Section 9, of the Constitution of 1908 to mean:

"The Legislature has entire control over the schools of the state subject only to the provisions above referred to. The division of the territory of the state into districts, the conduct of the school, the qualifications of teachers, the subjects to be taught therein, are all within its control." Child Welfare v. Kennedy School Dist., 220 Mich. 290, 296, 189 N.W. 1002, 1004 (1922).

In the leading case concerning construction of this section of the Michigan Constitution of 1963, the Michigan Supreme Court said:

"It is the responsibility of the state board of education to supervise the system of free public schools set up by the legislature and, as a part of that responsibility, to promulgate regulations specifying the number of hours necessary to constitute a school day for elementary school students as well as for other classifications or groupings of students, to determine the curricula and, in general, to exercise leadership and supervision over the public school system." Welling v. Livonia Board of Education, 382 Mich. 620, 624, 171 N.W. 2d 545, 546 (1969). See also Governor v. State Treasurer, 389 Mich. 1, 13, 203 N.W. 2d 457 (1972).

[6] Michigan has not treated its school districts as sacrosanct. To the contrary, Michigan always has regarded education as the fundamental business of the State as a whole. Local school districts are creatures of the State and act as instrumentalities of the State under State control. *Cf.* Senghas v. L'Anse Creuse Public Schools, 368 Mich. 557, 118 N.W.2d 975 (1962); McLaughlin v. Board of Education, 255 Mich. 667, 239 N.W. 374 (1931).

The record discloses a number of examples of State control over local public education in Michigan.

1. Following the holding of Welling v. Livonia Board of Education, *supra*, that there was no minimum length of day required under the 180-day school attendance rule absent a State Board of Education regulation, the Michigan State Board of Education, acting under its Constitutional mandate without legislative authority, established an administrative rule requiring local school boards to provide a minimum number of hours per school year. See, School Districts Child Account for Distribution of State Aid, Bulletin No. 1005, Michigan State Department of Education (1970).

2. Public Act 289 of 1964 (M.S.A. §15.2299(1) et seq., M.C.L.A. § 388.681 et seq.) required Michigan school districts to operate K-12 systems. When Public Act 289 became effective, 1,438 public school districts existed in Michigan. By the beginning of 1968, this figure had been reduced to 738, meaning that 700 school districts in Michigan have disappeared since 1964 through reorganization. Annual Report, Committee on School District Reorganization, 1968 Journal of the Senate 422-423 (March 1, 1968).

3. Pursuant to Act 289 of 1964, *supra*, the State Board of Education ordered the merger of the Brownstown No. 10, Hand, Maple Grove and Carson school districts, all in Wayne County. The action is best explained by the fact that Brownstown was, at that time, the wealthiest school district in the State, indeed, with a property valuation of $340,000 backing each child, perhaps the wealthiest district in the nation, while the other three districts were extremely poor.

4. When the Sumpter School District was on the verge of bankruptcy in 1968, the State Board of Education, acting under Public Act 239 of 1967 (M.S.A. § 15.2299(51) et seq., M.C.L.A. § 388.711 et seq.), merged the district with four adjoining districts, including the Airport School District. Significantly, though Sumpter was in Wayne County, Airport was in Monroe County, showing that county lines are not inviolate in Michigan.

5. The Nankin Mills School District in Wayne County was beset with financial problems and had no high school. Again, pursuant to Act 239, the State Board of Education in 1969 ordered this school district to merge with the Livonia, Garden City and Wayne Community schools.

6. When the Inkster School District in Wayne County was on the verge of financial bankruptcy, the Michigan legislature passed Public Act 32 of 1968 (M.S.A. § 15.1916 et seq., M.C.L.A. § 388.201 et seq.) enabling the district to borrow $705,000 but on the condition that if the district could not balance its budget, the State Board of Education could reorganize, merge or annex the district. The legislative history of Act 32 indicates at least two legislators voted against the bill in the House of Representatives because of the excessive control given to the State Board of Education:

> "I voted No on House Bill No. 3332 because in setting up the machinery to bail out distressed districts, it takes from the local communities the control over their own educational system by providing for excessive arbitrary reorganization powers in the hands of the Board of Education . . ."
>
> "This bill certainly sets up the State Board of Education to be a dictator of all school districts that run into financial problems." 1968 Journal of the House of Representatives 1965.

7. Too small and too poor to operate a high school, the all-black Carver School District in suburban Oakland County reached a crisis in 1960 when other surrounding white districts refused to accept Carver pupils on a tuition basis. The Carver district was merged with Oak Park.

8. The State Board of Education and Superintendent of Public Instruction may withhold State aid for failure to operate the minimum school year. M.S.A. § 15.3575, M.C.L.A. § 340.575.

In 1970, funds were withheld from the City of Grand Rapids School District. 17 Michigan School Board Journal 3 (March, 1970). For Attorney General Opinions holding that State aid may be withheld by the State Board of Education from school districts for hiring uncertified teachers, defaulting on State loans and for other reasons, see Op. Atty. Gen. No. 880, 1949-1950 Report of the Attorney General 104 (January 24, 1949, Roth); No. 2333, 1955 Report of the Attorney General 561 (October 20, 1955, Kavanaugh); No. 4097, 1961-1962 Report of the Attorney General 553 (October 8, 1962, Kelley).

9. The State of Michigan contributes, on the average, 34% of the operating budgets of the 54 school districts included in the proposed Metropolitan Plan of Integration. In eleven of the 54 districts, the State's contribution exceeds 50% and in eight more, it exceeds 40%. State aid is appropriated from the General Fund, revenue raised through state-wide taxation, and is distributed annually to the local school districts under a formula devised by the legislature. See, *e.g.*, Public Act 134 (1971), M.S.A. § 15.1919(51), M.C.L.A. § 388.611.

Though the local school districts obtain funds from the assessment of local property, the ultimate authority in insuring equalized property valuations throughout the State is the State Tax Commission, M.S.A. § 7.631 et seq., M.C.L.A. § 209.-101 et seq.; M.S.A. § 7.206, M.C.L.A. § 211.148; M.S.A. § 7.52, M.C.L.A. § 211.34. The State's duty to equalize is required by the Michigan Constitution, Article IX, Section 3. This "State equalized valuation" serves as the basis for calculating local revenue yields. See, Ranking of Michigan Public High School—School Districts by Selected Financial Data, 1970, Bulletin 1012, Michigan State Department of Education (1971).

10. The Michigan School Code reaffirms the ultimate control of the State over public education. Local school districts must observe all State laws relating to schools,[1] hold school a

[1] M.S.A. §15.3252(c), M.C.L.A. §340.252(c).

minimum number of days per year,[2] employ only certified teachers,[3] teach civics, health and physical education and drivers' education,[4] excuse students to attend religious instruction classes,[5] observe State requirements when teaching sex education,[6] make annual financial and other reports to the Superintendent of Public Instruction,[7] adopt only textbooks which are listed with the Superintendent of Public Instruction[8] and must follow all rules and regulations of the State Department of Education.

Local school districts, unless they have the approval of the State Board of Education or the Superintendent of Public Instruction, cannot consolidate with another school district,[9] annex territory,[10] divide or attach parts of other districts,[11] borrow monies in anticipation of State aid,[12] or construct, reconstruct or remodel school buildings or additions to them.[13]

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[2] M.S.A. §15.3575, M.C.L.A. §340.575.

[3] M.S.A. §§15.1023(10)(a), 15.3570, M.C.L.A. §§388.1010(a), 340.570.

[4] M.S.A. §§15.1951, 15.3361, M.C.L.A. §§388.371, 340.361; M.S.A. §§15.3781-15.3782, M.C.L.A. §§340.781-340.782; M.S.A. §9.2511(c), M.C.L.A. §257.811(c).

[5] M.S.A. §15.3732(g), M.C.L.A. §340.732(g).

[6] M.S.A. §15.3789, M.C.L.A. §340.789.

[7] M.S.A. §15.3612, M.C.L.A. §340.612; M.S.A. §§15.3616, 15.-3688, M.C.L.A. §§340.616, 340.688.

[8] M.S.A. §15.3887(1), M.C.L.A. §340.887(1).

[9] M.S.A. §15.3402, M.C.L.A. §340.402.

[10] M.S.A. §15.3431, M.C.L.A. §340.431.

[11] M.S.A. §15.3447, M.C.L.A. §340.447.

[12] M.S.A. §15.3567(1), M.C.L.A. §340.567(a).

[13] M.S.A. §15.1961, M.C.L.A. §388.851, Op.Atty.Gen. No. 1837, 1952-1954 Report of the Attorney General 440 (Nov. 8, 1954).

The power to withhold State aid, of course, effects enormous leverage upon any local school district, since on the average 34 per cent of the operation budget of the 54 school districts included in the proposed Metropolitan Plan is paid for by the State.

In the instance of the City of Detroit, the State exhibited its understanding of its power over the local school district by the adoption of Act 48 of the Public Acts of 1970 which repealed a high school desegregation plan previously adopted by the Detroit Board of Education. See 433 F.2d 897.

APPENDIX C

The Fifth Circuit Court of Appeals, sitting en banc, rejected "the anodyne dichotomy of classical de facto and de jure segregation," in the following language:

16 CISNERO v. CORPUS CHRISTI IND. SCHOOL DIST.

While there is admittedly no catholicity of viewpoint in the Circuits on the question of intentional state action, this Court has never tempered its prohibition of school board actions that create, maintain, or foster segregation by the requirement that a discriminatory intent be shown. The underpinning of our decisions is a determination of the unlawful effect of state action upon the existence of unitary school systems, *Lee v. Macon County Board of Educ.*, 5 Cir. 1971, 448 F.2d 746, 752; *Stout v. Jefferson County Board of Educ.*, 5 Cir. 1971, 448 F.2d 403, 404, *citing Cooper v. Aaron, supra; Bush v. Orleans Parish School Board*, E.D. La. 1960, 190 F.Supp. 861, *aff'd sub nom. City of New Orleans v. Bush*, 1961, 333 U.S. 212; *United States v. Texas*, E.D. Texas 1971, 330 F.Supp. 235, Part II, *aff'd as modfied, United States v. Texas*, 5 Cir. 1971, 447 F.2d 441. See *Wright v. City of Brighton, Ala.*,

5 Cir. 1969, 441 F.2d 447, *cert. denied* 404 U.S. 915; *Hall v. St. Helena Parish School Board*, 5 Cir. 1969, 417 F.2d 801, 807, *cert. denied* 396 U.S. 904; *Henry v. Clarksdale Municipal School District*, 5 Cir. 1969, 409 F.2d 682, 687, *cert. denied* 396 U.S. 940.

This principle has now become the law of the land. In *Wright v. Council of the City of Emporia*, 1972, — U.S. — [40 U.S.L.W. 4806, June 20, 1972], the Supreme Court held that the city could not create a new school district separate from that of the surrounding county where "its effect would be to impede the process" of the court-ordered dismantling of a dual school system, *id.* at 4812, finding that under its previous decisions in *Green v. County School Board*, 1968, 391 U.S. 430, and *Monroe v. Board of Commissioners*, 1968, 391 U.S. 450, school board action must be judged "according to whether it hinders or furthers the process of school desegregation." *Id.* at 4809. Citing with approval our decisions in *Lee* and *Stout*, *supra*, the Court rejected the "dominant purpose" test adopted by the Fourth Circuit decision in the case, focusing rather "upon the effect—not the purpose or motivation—of a school board's action in determining whether it is a permissible method of dismantling a dual system. . . . [T]his 'dominant purpose' test," said the Court, "finds no precedent in our decisions." *Id.* at 4810.

Importantly, the dissent voiced no opposition to the discarding of purpose and motivation, but objected only to the majority's factual determination that the action of the city in creating its own school district would impede the progress of desegregation.

School cases serve to emphasize the correctness of this principle, for regardless of motive, the children that suffer from segregation suffer the same deprivation of educational opportunity that *Brown* condemns. No one would suggest that the

validity of a segregation law depends upon the legislators' motives in enacting it, or that such a law is unconstitutional only when it can be ascribed to racial animus. Why then the distinction between types of school board action that produce segregation? "[T]he factor of malevolent motivation is farther from the core of invidiousness that condemns explicit racial discrimination than are the odious effects produced." *Goodman, De Facto School Segregation: A Constitutional and Empirical Analysis*, 60 Calif. L. Rev. 275, 291 (1972).[7]

467 F.2d 142, pp. 150-151.

APPENDIX D

Judicial rationalization for the justification of slavery in turn became vestiges of slavery and the rationalization for the continuation of vestiges of slavery likewise in turn became further vestiges of slavery.

The following is a combination of excerpts from The Report of the Select Committee on Equal Educational Opportunity, United States Senate, 92D Congress, 2d Session, Report No. 92-000, pages 191, 192, and 193; The Long Road to Humanity, by Stanton A. Coblentz, Library of Congress Catalog No. 58-10603, at pages 339, 340; and Schultz v. Stark, 238 Mich. 102, at 103-104.

Chapter 15—School Desegregation and the Law

A. *A Brief Background*

Since ratification of the 14th Amendment in 1868, racial equality under law has been a fundamental principle of the American legal system. That was not always the case. For

over 300 years, virtually all black Americans had been denied the most basic rights of American citizenship. In 1865, nearly 90 percent of all Americans of African descent were slaves. These black people were not American citizens; at law they were considered the personal property of their owners. They were not entitled to the vote, nor to due process of law in the courts. They were not permitted to own possessions, or even to marry without proprietary consent. The average life expectancy of black Americans was two-thirds that of whites.

Perhaps the most graphic description of the total subordination of Negroes in America before the Civil War is provided by the Supreme Court's 1857 decision in *Dred Scott v. Sandford*, 60 U.S. 303. There the court invalidated the "Missouri Compromise," an Act of Congress excluding slavery from portions of the Northwest Territories—as an unconstitutional restriction of the property rights of slaveowners and potential slaveowners. Those property rights were guaranteed against Federal infringement under the due process clause of the 5th Amendment to the U. S. Constitution.

The court held that in the eyes of the Constitution black Americans were:

> . . . considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them.

THE LONG ROAD TO HUMANITY
THE MODERN SLAVE-LASH

In the same way, the judicial cases concerning slavery will reveal many unvarnished truths. A resumé of a small number will suffice to indicate the complexion of all.

To begin with a case that reflects general attitudes, what constitutes insolence in a slave? This was the question before the Court in North Carolina in 1852, in the case of *State v. Bill*. And here is the opinion of Justice Nash, of the Supreme Court:

> What acts in a slave toward a white person will constitute insolence, it is manifestly impossible to define—it may consist in a look, the pointing of a finger, a refusal or a neglect to step out of the way when a white person is seen to approach. But each of such acts violates the rules of propriety, and if tolerated, would destroy that subordination, upon which our social system rests.[12]

This, certainly, is eloquent. If even a look, or a "refusal or neglect to step out of the way," can be construed as insolence of a type threatening to "destroy that subordination, upon which our social system rests," we can only conclude that the inferiority of the Negro is one of the pillars of society and that a second and equal support is the effort to make a demonstration of that inferiority.

However, we need not judge merely by such an expression of opinion. One of the abhorrent features of slavery in the United States, which subjected it to the most criticism in its own day and which was, in fact, responsible for making many Abolitionists, was the denial of the basic rights of the family, the liability of the wife to be separated from the husband or the children from the mother, with no more regard for human feelings than if they had been members of a litter of puppies. While many slave-holders would not permit such breaches, the cases tell us time after time of less considerate owners.

Following the Civil War, dramatic changes in the legal status of Negro Americans were attempted through constitutional amendment.

In 1865, the 13th Amendment outlawed slavery and involuntary servitude—except as punishment for crime. Ratification of the 14th Amendment followed in 1868, conferring citizenship on *all* persons born within the United States and guaranteeing the rights of due process of law and equal protection of the laws to all persons. The trilogy of civil rights amendments was completed in 1869 with the 15th Amendment by prohibiting denial of the vote on the basis of race.

These changes in the legal status of racial minorities were not cheaply purchased. They came at the cost of 4 years of Civil War, 529,000 American lives, and sectional bitterness that continues to divide the Nation, although with decreasing force, to the present day.

However, the adoption of the civil rights amendments did not confer immediate equality of legal status upon American blacks. State laws required segregation in public places, restrictive covenants in land deeds prohibiting sale to members of racial minorities, literacy requirements for voting with "grandfather" clauses to protect illiterate whites registered prior to passage of the 15th Amendment, "white primaries", job discrimination, and other discriminatory practices were adopted in much of the Nation to confine blacks to second-class citizenship. And, notwithstanding the civil rights amendments, many of these practices received the express approval of the Federal judiciary. In *Plessy v. Ferguson*, 163 U.S. 537, decided in 1896, the Supreme Court led the way. Upholding a Louisiana law requiring separate railway cars for whites and Negroes, the court said:

> The object of the [14th] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things, it could not have been intended to abolish distinctions based upon color . . . Laws permitting and even requiring separation, in

> places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally recognized as within the competency of the State legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced. [Citing *Roberts v. City of Boston*, 5 Cush. 198 (1894).]

The Court continued:

> We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it . . . Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulty of the present situation.

Fellows, J. It is settled by former decisions of this court that a restraint upon occupancy of the lots of a subdivision by colored persons is valid and enforceable (*Parmalee v. Morris*, 218 Mich. 625 [38 A. L. R. 1180]), although a restraint upon alienation to a colored person is void (*Porter v. Barrett*, 233 Mich. 373). The fact that defendants are colored persons is established by their own admissions while on the witness stand and by the finding to that effect by the trial judge who saw them in court. The record does disclose, however, that Mrs. Starks is quite light colored, and she testified that many,

many times she has been taken for a white woman Mr. Starks is a parlor car conductor on the Pere Marquette. Defendants appear to be thrifty.

Meaningful enforcement of the civil rights amendments has taken place only in the last quarter century.

Perhaps the decisive moment was the Supreme Court's crucial decision in *Shelly v. Kramer*, 334 U.S. 1 (1948), that the equal protection clause prohibits enforcement by State courts of land deed restrictions prohibiting the transfer of land to members of racial minorities.

In the area of education, three cases* required the admission of Negro students to State-run white institutions of higher education—on the ground that educational opportunities of equivalent value were not made available in State-run schools for black students. Then the dam broke in 1954, with *Brown v. Board of Education*. There the court ruled maintenance of officially segregated public schools unconstitutional—even where State and local authorities have attempted in good faith to provide equivalent facilities, equipment and personnel in both black and white schools.

Brown effectively removed the legal underpinnings of *Plessy v. Ferguson*, ended the doctrine of "separate but equal," and laid the groundwork for a new equal protection clause jurisprudence.

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* *Sipes v. Board of Regents of University of Oklahoma*, 332 U.S. 631; *Sweatt v. Painter*, 339 U.S. 629; *McLaurin v. Oklahoma State Regents*, 339 U.S. 637.

ORDER

(U. S. District Court—Western District of Michigan—
Southern Division)

(Filed December 19, 1975)

National Association for the Advancement of
Colored People, Etc. et al., Plaintiffs

vs.

Lansing Board of Education, et al. Defendants

As a session of said court held in and for said District and Division, at the City of Grand Rapids, this 19th day of December, 1975.

Present: Honorable Noel P. Fox, Chief District Judge.

Having considered all of the evidence submitted to it in this case over the past three years, the court finds that the Lansing Board of Education, through its acts and omissions, has created and maintained a segregated dual school system in violation of the Constitution and laws of the United States and of the constitution of the State of Michigan.

Therefore, It Is Hereby Ordered, Adjudged And Decreed that the February 1, 1973 resolutions of the Lansing Board of Education revising the Policy Statement on Equal Educational Opportunity and rescinding the desegregation plan of June 29, 1972, are unconstitutional, void, and of no effect. The Board of Education, its members and their successors in office, its officers, agents, servants, employees, and attorneys, and any other persons acting in active concert or participation with them, are hereby Enjoined And Restrained from giving any force or effect to these February 1, 1973 resolutions.

It Is Further Ordered that the cluster plan for desegregating Lansing elementary schools remain in effect until such further plans as the court orders or approves are conceived and implemented.

It Is Further Ordered that the Lansing Board of Education submit on or before March 1, 1976, plans which could be implemented in September 1976 to remedy the constitutional violations found in this case and end racial isolation throughout the school system. Plaintiffs should likewise submit plans they wish the court to consider within that same time period. A conference and hearing will be conducted on March 4, 1976. The court will determine the appropriate remedy and decide other matters incidental to this case after both parties have an opportunity to present arguments at this hearing.

It Is Further Ordered that the Board carry out all aspects of this order of the court in good faith.

/s Noel P. Fox
Chief District Judge

No. 76-1267

United States Court of Appeals
For the Sixth Circuit

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Lansing Branch; CYNTHIA TAYLOR, JUDITH TAYLOR and ANDREA TAYLOR, by their father and Next Friend, JAMES R. TAYLOR: MELINDA LEA HEDLEY, CHRISTINE MICHELE HEDLEY, DOUGLAS JOHN HEDLEY and DANIEL JOSEPH HEDLEY, by their mother and Next Friend, JOAN L. HEDLEY; PETER MILLER and ELIZABETH MILLER, by their father and Next Friend, CHARLES MILLER; FRANK J. PENNONI and JAMES PENNONI, by their mother and Next Friend, KATHLEEN PENNONI; and DAVID KRON and LISA KRON, by their father and Next Friend, WALTER V. KRON,

Plaintiffs-Appellees,

v.

LANSING BOARD OF EDUCATION, a body corporate; and Members of the LANSING BOARD OF EDUCATION; viz., VERNON D. EBERSOLE, CLARE D. HARRINGTON, MICHAEL F. WALSH, RAY A. HANNULA, JOAN HESS, J. .C. WILLIAMS, BRUCE ANGELL, JOSEPH E. HOBRLA and MAX D. SHUNK,

Defendants-Appellants.

ON APPEAL from the United States District Court for the Western District of Michigan.

Decided and Filed July 26, 1977.

Before: CELEBREZZE, PECK and LIVELY, Circuit Judges.

CELEBREZZE, Circuit Judge. The Board of Education and its individual members appeal from a finding of liability in a suit brought to desegregate public elementary schools in Lansing, Michigan. The suit was brought as a class action by the National Association for the Advancement of Colored People (NAACP) and by children and parents of children who are elementary students in the Lansing school system. Chief Judge Noel P. Fox of the Western District of Michigan, Southern Division, found that the Lansing School Board, through its acts and omissions, has created and miantained a racially segregated school system. The District Court enjoined the School Board from enforcing resolutions of February 1, 1973, rescinding a voluntary cluster-school desegregation plan instituted on June 29, 1972. The Court ordered that the cluster plan for desegregating Lansing's elementary schools remain in effect until a final remedy is submitted by the Board and approved by the Court. Appellees raise three issues on appeal: whether the District Court applied an incorrect legal standard; whether the Court's findings of fact are clearly erroneous; and whether the Board of Education was denied a fair trial. For the reasons stated below, we affirm.

In the landmark case of *Brown v. Board of Education*, 347 U.S. 483, 495 (1954) (*Brown* I), the Supreme Court overruled the "separate-but-equal" doctrine of *Plessy v. Ferguson*, 163 U.S. 537 (1896), and held that racially segregated public education facilities are inherently unequal and that children who are forced to attend segregated schools are denied the equal protection of laws in violation of the Fourteenth Amendment. But to be violative of the Fourteenth Amendment, the racial segregation in public schools must result from some form of state action and not from factors, such as residential housing

patterns, which are beyond the control of state officials.[1] *See Swann v. Board of Education*, 402 U.S. 1, 17-18 (1971). Where a dual educational system was authorized by state law at the time of *Brown* I, finding state action presents no serious problem. The state automatically assumes an affirmative duty "to effectuate a transition to a racially non-discriminatory school system," *Brown v. Board of Education*, 349 U.S. 294, 301 (1955) (*Brown* II), by eliminating "all vestiges of state-imposed segregation." *Swann v. Board of Education*, 402 U.S. at 15. *See also Green v. County School Board*, 391 U.S. 430, 437-38 (1968). The problem of finding state action is more acute, however, in northern school districts which do not have a history of statutorily authorized segregated schools. *See Keyes v. School District No. 1*, 412 U.S. 189, 201 (1973). However, even in school districts which purport to be unitary, unlawful segregation exists where "school authorities have carried out a systematic program of segregation affecting a substantial portion of students, schools, teachers, and facilities within the school system. . . ." *Keyes v. School District No. 1*, 412 U.S. at 201. In *Keyes* the Supreme Court distinguished between de facto and de jure segregation. De jure segregation was defined as "a current condition of segregation resulting from intentional state action directed specifically at the [segregated] schools" *Id.* at 205-06. The *Keyes* Court stressed that the differentiating factor between de jure and de facto segregation is the "purpose or intent to segregate." *Id.* at 208. The distinction between de facto and de jure segreation has been criticized and its abandonment has been urged. *See Keyes v. School District No. 1*, 412 U.S. at 216 (Douglas, J., concurring); *id.* at 219-36 (Powell, J., concurring in part, dissenting in part). In *Cisternos v. Corpus Christi Independent School District*, 467 F. 2d 142, 148 (1972), the Fifth Circuit rejected the de facto/de jure dichotomy and held that all that need be shown to establish illegal segregation is that official action had the discriminatory effect of denying equal educational

[1] Local school boards are agents of the state for purposes of the Fourteenth Amendment. *Cooper v. Aaron*, 358 U.S. 1, 16 (1958).

opportunities to minority students. The "discriminatory effect" approach was, however, rejected in *Washington v. Davis*, 426 U.S. 229, 240 (1976), when the Supreme Court reaffirmed the de facto/de jure distinction recognized in *Keyes*. *See also Austin Independent School District v. United States*, — U.S. — (1977).[2] In *Washington v. Davis*, 426 U.S. at 240, the Supreme Court cites *Keyes* for the proposition that a showing of "racially discriminatory purpose" is required in all equal protection cases.[3]

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[2] In *Austin Independent School District v. United States*, — U.S. — 1977), the Supreme Court vacated the Fifth Circuit's decision in *United States v. Texas Education Association*, 532 F. 2d 380 (5th Cir. 1976), and remanded "for reconsideration in light of *Washington v. Davis*." In *United States v. Texas Education Association*, 532 F. 2d at 387, the Fifth Circuit adhered to its previous ruling in *Cisternos v. Corpus Christi Independent School District, supra*, that all that need be shown for actionable segregation is a cause and effect relationship between state action and the racial and ethnic segregation of public school students. The Fifth Circuit expressly held that where "discriminatory effect" is shown, there is no need to prove discriminatory intent. *Id.* The remand in *Austin Independent School District v. United States* signals a disavowal of the Fifth Circuit's discriminatory effect approach to school desegregation and a reaffirmance of the concept of de jure segregation as defined in *Keyes* and reiterated in *Washington v. Davis*. *See Dayton Board of Education v. Brinkman*, 45 U.S.L.W. 4910, 4912 (June 28, 1977).

We note in passing, however, that Justice Powell in a concurring opinion to the *Austin* case stated that in an earlier stage of the case "findings were made which evidenced segregative intent, *see, e.g., United States v. Texas Education Agency*, 467 F. 2d 848, 865-869 (CA 5 1972)." The findings to which Justice Powell referred related to the Fifth Circuit's holding that the school board by "its choice of school site location, construction and renovation of schools, drawing of attendance zones, student assignment and transfer policies, and faculty and staff assignments, caused and perpetuated the segregation of Mexican-American students within the school system." 467 F. 2d at 865-66 (footnotes omitted). Similar policies by the Lansing Board of Education were the bases for the District Court's finding of de jure segregation in this case.

[3] The more rigorous "discriminatory effect" test is still applicable to causes of action based on statutory rights rather than on straight constitutional grounds for example, those granted under Title VII of the Civil Rights Act of 1964. *See Washington v. Davis*, 426 U.S. at 238-39, 247-48. *But c.f. Trans World Airlines, Inc. v. Hardison*, 45 U.S.L.W. 4672, 4677 (U.S. Sup. Ct. June 14, 1977).

Appellants contend that *Washington v. Davis* and *Austin Independent School District v. United States* require reversal of the lower court's decision because Judge Fox relied on the now-discredited "discriminatory effect" test in evaluating the Board's conduct. We reject this contention. In his opinion, Judge Fox explicitly adopted a test dependent on purposeful segregation by public school officials. While mentioning that the Fifth Circuit had rejected the de jure/de facto dichotomy in *Cisternos v. Corpus Chriasti Independent School District*, Judge Fox expressly followed the Supreme Court's lead in *Keyes* and assumed that de jure segregation was required to support a finding of constitutional violation, preferring to leave to future adjudication the question of whether something other than de jure segregation constitutes a violation of the Fourteenth Amendment. In finding Appellees guilty of acts of de jure segregation, the District Court applied the standards we announced in *Oliver v. Michigan State Board of Education*, 508 F.2d 178, 182 (6th Cir. 1974):

> A finding of de jure segregation requires a showing of three elements: (1 action or inaction by public officials (2) with a segregative purpose (3) which actually results in increased or continued segregation in the public schools. A presumption of segregative purpose arises when plaintiffs establish that the natural, probable, and foreseeable result of public officials' action or inaction was an increase or perpetuation of public school segregation. The presumption becomes proof unless defendants affirmatively established that their action or inaction was a consistent and resolute applicatior of racially neutral policies. (footnote omitted)

Appellees claim that our reference in *Oliver* to the inference of segregated purpose from "the natural, probable, and foreseeable result of public officials' action or inaction" was an adoption of the "discriminatory effect" test repudiated in *Washington v. Davis* and *Austin Independent School District v.*

United States. On two previous occasions, we have rejected similar arguments. *Bronson v. Board of Education*, 525 F. 2d 344, 348 (6th Cir. 1975); *Higgins v. Board of Education*, 508 F. 2d 779, 790-91 (6th Cir. 1974). As we noted in *Bronson v. Board of Education*, 525 F. 2d at 348, the correct reading of *Oliver* is that the Court did not dispense with the requirement that segregative intent or purpose be proven, but rather held that the required intent could be inferred from acts and policies of school authorities which had the natural and foreseeable effect of producing segregated schools. This is not a novel position. *See e.g., United States v. School District of Omaha*, 521 F.2d 530, 535-36 (8th Cir. 1975), *vacated on other grounds*, 45 U.S.L.W. 3850 (June 28, 1977) (per curiam); *Hart v. Community School Board of Education*, 512 F. 2d 37, 50-51 (2d Cir. 1975); *Morgan v. Kerrigan*, 509 F. 2d 580, 588-89 (1st Cir. 1974). Nor is it inconsistent with the principle of de jure segregation enunciated in *Keyes* and reiterated in *Washington v. Davis*. *See Armstrong v. Brennan*, 539 F. 2d 625, 634-35 (7th Cir. 1976), *vacated on other grounds*, 45 U.S.L.W. 3850 (June 28, 1977) (per curiam). In *Washington v. Davis* the Supreme Court admitted that "[n]ecessarily, an invidiously discriminatory purpose may often be inferred from the totality of relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another. . . . Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution." 426 U.S. at 242. The majority's reference to the necessity of proving segregative intent from the totality of the circumstances was amplified by Justice Stevens in his concurring opinion:

> Frequently the most provative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor. For normally the actor is presumed to have intended the natural consequences of his deeds. This is particularly true in the case of governmental action which is frequently

> the product of compromise, of collective decisionmaking, and of mixed motivation. It is unrealistic, on the one hand, to require the victim of alleged discrimination to uncover the actual subjective intent of the decisionmaker or, conversely, to invalidate otherwise legitimate action simply because an improper motive affected the deliberation of a participant in the decisional process. A law conscripting clerics should not be invalidated because an atheist voted for it.

Washington v. Davis, 426 U.S. at 253 (Stevens, J., concurring). *See also Village of Arlington Heights v. Metropolitan Housing Development*, — U.S. —, 97 S. Ct. 555, 564-65 (1977).[4] Indeed, it would be difficult, and nigh impossible, for a district court to find a school board guilty of practicing de jure segregation, unless the court is free to draw an inference of segregative intent or purpose from a pattern of official action or inaction which has the natural, probable and foreseeable result of increasing or perpetuating school segregation.[5] *See Oliver v. Michigan State Board of Education*, 508 F. 2d at 182-83; *United States v. School District of Omaha*, 521 F. 2d at 535-37; *Hart v. Community School Board*, 512 F. 2d at 50. Until the Supreme

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[4] In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, — U.S. at —, 97 S. Ct. at 563-65, the Supreme Court discussed its recent decision in *Washington v. Davis* and elaborated on the nature of the "discriminatory purpose" required for dejure segregation and various methods of proving segregatory intent. The Court noted that the intent to discriminate need not be the "dominant" or "primary" purpose for the official action, but "[w]hen there is proof that a discriminatory purpose has been a motivating factor in the decision" the scienter element of de jure segregation is proven. — U.S. at —, 97 S. Ct. at 563.

[5] In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, — U.S. at — & nn. 11, 12, 97 S. Ct. at 563 & nn. 11, 12, the Supreme Court alluded to the inherent difficulties in determining the collective motivation of a legislative or administrative body. *See Palmer v. Thompson*, 403 U.S. 217, 224-25 (1971); *Keyes v. School District No. 1*, 413 U.S. at 233-34 (Powell, .J, concurring). *See also Oliver v. Michigan State Board of Education*, 508 F. 2d at 182-83; *Hart v. Community School Board*, 512 F. 2d at 50.

Court instructs us to the contrary, we will adhere to the mandate of *Keyes* and uphold a district court's finding of de jure segregation wherever it is apparent from objective evidence in the record that school authorities have carried out a "systematic program of school segregation," which has, in effect, created a "dual school system." 413 U.S. at 201.[6]

The District Court found that the Lansing Board of Education had practiced de jure segregation in the administration of the elementary school system.[7] In making this finding, the District

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[6] In *Dayton Board of Education v. Brinkman*, 45 U.S.L.W. 4910 (June 28, 1977), the Supreme Court vacated our decision in *Brinkman v. Gilligan*, 539 F. 2d 1084 (6th Cir. 1976), and remanded the case for reconsideration of the scope of the remedy ordered. The Supreme Court held that the constitutional violations found by the District Court and upheld on appeal by this Court were not sufficiently extensive on their face to justify a systemwide remedy. On remand, the Supreme Court directed the District Court, subject to review by this Court, to "determine how much incremental segregative effect these violations had on the racial distribution of the Dayton school population as presently constituted, when that distribution is compared to what it would have been in the absence of such constitutional violations. The remedy must be designed to redress that difference, and only if there has been a system-wide impact may there be a system-wide remedy." 45 U.S.L.W. 4914. At the same time and for the same reason, the Supreme Court vacated the decisions of the Eighth Circuit in *School District of Omaha v. United States*, 541 F. 2d 708 (8th Cir. 1976), *vacated and remanded*, 45 U.S.L.W. 3850 (June 28, 1977), and of the Seventh Circuit in *Brennan v. Armstrong*, 539 F. 2d 625 (7th Cir. 1976), *vacated and remanded*, 45 U.S.L.W. 3850-51 (June 28, 1977). While these decisions will have a profound impact at the remedy stage of this case, they do not directly effect the District Court's findings of liability or our affirmance of those findings. If anything, the Supreme Court's express application of *Washington v. Davis* to a school desegregation case reaffirms the District Court's conclusion that only de jure segregation, as that term was defined in *Keyes*, offends the constitution and triggers a duty on the part of school officials to remedy the violation. *See also Milliken v. Bradley*, 45 U.S.L.W. 4875, 4877 (June 27, 1977).

[7] Lansing secondary schools were integrated in 1966 pursuant to a plan adopted by the Board of Education. *See Jipping v. Lansing School District*, 15 Mich. App. 441 (1968).

Court focused on a number of acts and policies of the school board held to evidence de jure segregation, including policies relating to attendance boundaries, medical transfers, mobile units, maintenance of physical facilities, one-way busing of black children, and faculty hiring and assignments. The Court also inferred segregative intent from the Board's rescission of the "cluster plan" for desegregating the elementary schools and the construction and intended use of a new elementary school to be located in a heavily black area. Appellants urge that the District Court's findings are clearly erroneous. They assert that attendance at Lansing elementary schools in determined according to a "neighborhood school" policy and attribute the existence of racially identifiable schools to segregated residential patterns, rather than to practices and policies of the Board of Education. For this reason, Appellees claim that the District Court erred in holding that the school board had an affirmative duty to desegregate the elementary schools. Appellees in rebuttal, point to specific acts of the school board which the Court found to be acts of de jure segregation and which contributed significantly to the segregated condition of the public elementary schools. Appellees contend that the long history of discrimination in Lansing's public schools imposes a duty on the Board of Education to take affirmative steps to alleviate segregation in the elementary schools. Thus, the argument divides along familiar lines. The Board invokes the sanctity of neighborhood schools while the class representatives claim that the "neighborhood school" policy was unfairly manipulated to justify containment of minority students in segregated schools.

As a matter of general principle, assigning school children to schools in their neighborhoods does not offend the constitution. *See e.g., Higgins v. Board of Education*, 508 F. 2d at 790; *Deal v. Cincinnati Board of Education*, 419 F. 2d 1387 (6th Cir. 1969); *Deal v. Cincinnati Board of Education*, 369 F. 2d 55 (6th Cir. 1966). Racial imbalance in the schools

does not, in itself, establish a constitutional violation.[8] *See Keyes v. Denver School District No. 1*, 413 U.S. at 212. *See also Bronson v. Board of Education*, 525 F. 2d at 347. The Constitution imposes no duty on school officials to correct segregative conditions resulting from factors over which they have no control, such as residential patterns, and the failure to anticipate the effect on racial composition of the schools of adherence to a neighborhood school policy does not signify that a school board has created a dual system, absent a showing of segregative intent. *Higgins v. Board of Education*, 508 F. 2d at 791. However, "the mere assertion of [a 'neighborhood school'] policy is not dispositive where . . . the school authorities have been found to have practiced *de jure* segregation in a meaningful portion of the school system by techniques that indicate that the 'neighborhood school' concept has not been maintained free of manipulation."[9] *Keyes v. School District No. 1*, 413 U.S. at 212. With the above in mind, we will now review the District Court's findings of fact to determine whether they are clearly erroneous. *See Dayton Board of Education v. Brinkman*, 45 U.S.L.W. at 4913; *Oliver v. Michigan State Board of Education* 508 F. 2d at 182.

The District Court made a finding that most blacks lived on the west side of Lansing, in a region commonly known as the "River Island" area.[10] Following a familiar demographic pattern,

[8] It is, however, significant evidence of de jure segregation. *See Washington v. Davis*, 426 U.S. at 242; *Village of Arlington Heights v. Metropolitan Housing Development Board*, — U.S. at —, 97 S. Ct. at 564.

[9] The racial composition of neighborhood schools often influences residential patterns within the school district. Acts of de jure segregation "may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools." *Keyes v. School District No. 1*, 413 U.S. at 202. *See also Swann v. Board of Education*, 402 U.S. at 20-21.

[10] The District Court found that, despite its name, the River Island area "is by no means an island, geographically isolated from other parts of the school district. To the contrary, it comprises the city's central business district and the State Capitol, and is readily accessible from all other parts of the city."

in the 1950's black people moved into previously white neighborhoods with a corresponding change in the racial composition of elementary schools in the area. The focal points of many of the Court's findings are four elementary schools—Main, Michigan, Kalamazoo and Verlinden. The District Court found that in the late 1950's the Board of Education deliberately froze attendance zone boundaries to contain black students within predominantly black schools, while altering the attendance zone boundaries between the white Verlinden service area and the black Michigan and Kalamazoo service areas in a manner which "had the foreseeable effect of increasing the racial identifiability of Michigan Avenue School." By 1957, the Board of Education was aware that certain elementary schools, notably the Main Street School, were becoming totally segregated and that certain boundary changes would be necessary to alleviate the conditions. Boundary changes between Main, Michigan and Verlinden could have decreased the racial identifiability of these schools. Such changes were requested in 1957 by a committee appointed at the instigation of parents of black students at Main. The Board of Education rejected the boundary changes suggested by the committee, explaining that alteration of the boundaries would require children to "travel unreasonably long distances." The Board of Education also initially rejected a request by white parents living in the Main Street School service area to change the boundary lines to enable their children to attend Verlinden School. In September, 1957, the Board of Education did change the boundaries between Michigan, Verlinden and Kalamazoo for the stated purpose of "balancing enrollment." The boundary changes took an all-white area from Michigan, which was becoming increasingly black, and transferred it to Verlinden, which was white, and at the same time a black area was transferred from the Kalamazoo service area to Michigan. The Dis-

trict Court found that the boundary changes "had the foreseeable effect of increasing the racial identifiability of Michigan Avenue School and continuing the racial isolation of White Verlinden School." Since 1957, the Court noted that the Board has ignored repeated opportunities and requests to re-examine the attendance zone boundaries. The District Court discounted reasons given by the Board for the 1957 boundary decisions. The Board refused to adjust the boundaries between the Main and Verlinden schools because it found the distances prohibitive, yet the Court found that many of the distances involved were well within the distance approved by the Board for students walking to school. The stated purpose of the 1957 boundary changes was to "balance enrollment" between Michigan, Verlinden and Kalamazoo. However, the Court noted that what actually happened was that Michigan, where enrollment was below capacity, had no apparent net change in the size of its service area. The real effect of the boundary change on Michigan was to remove an all-white neighborhood from its service area and replace it with a black area, thereby accelerating segregation at the school. Attendance zone alterations which have the effect of exacerbating racial imbalance and isolation are probative of segregative intent. *Keyes v. School District No. 1*, 413 U.S. at 201; *Oliver v. Michigan State Board of Education*, 508 F. 2d at 184; *Bradley v. Milliken*, 484 F.2d 215, 221-36 (6th Cir. 1973), *rev'd on other grounds*, 418 U.S. 717 (1974); *Davis v. School District*, 443 F. 2d 573, 576 (6th Cir. 1971); *United States v. Board of School Commissioners*, 474 F. 2d 81, 85-86 (7th Cir. 1973). We conclude that the District Court did not commit clear error in inferring segregative purpose from the Board's policies on attendance zone boundaries in the River Island area.

The District Court also found purposeful segregation in the implementation of the Board of Education's special transfer policy. In 1957 a student transfer policy was adopted by the Board of Education which permitted students to transfer from neighborhood schools because of emotional need if the transfer

request was accompanied by the statement of a physician. The Court found that the special transfer policy was used by a large number of students to flee from the predominantly black schools, Main and Michigan, to Verlinden, a predominantly white school. A substantial percentage of those transferring were white students at a time when white students made up a relatively small portion of the Main and Michigan student bodies. Evidence in the record adequately supports the District Court's finding that the special transfer policy was being abused by students, black and white, who were trying to escape from schools which were becoming increasingly segregated. That black students as well as white students were taking advantage of the special transfer policy to transfer in unusually large numbers from schools becoming increasingly black to the predominantly white Verlinden School is no defense to a charge of de jure segregation. If anything, the proclivity of blacks to join whites in fleeing from minority to majority schools stands as mute evidence of the relative inferiority of the segregated schools. The school board was certainly aware of abuse of the special transfer policy. In 1961 the Citizens' Committee on School Needs reported that the transfer policy should be changed because it contributed to segregation. In 1965, the Education Committee of the Lansing NAACP presented to the Board of Education a report which criticized the transfer practices and which noted that no action had been taken since the 1961 recommendation. In 1966, the report of the Citizens' Advisory Committee condemned the transfer policy and recommended that a psychologist or psychiatrist be utilized to evaluate the emotional needs of students seeking transfers. In January 1967, this recommendation was adopted by the Board and the special transfer policy was amended to require verification by a psychiatrist for any transfer based on emotional instability. However, in June 1967, the transfer policy was amended again to require either the statement of a psychiatrist or a physician, thus marking a return to the former policy which had been abused. The District Court found that "the

transfer policy was abused in a way which contributed to the segregative conditions in these schools and with the knowledge of school officials and the Board of Education." The Court concluded that the "Board's intentional maintenance of the transfer policy and its refusal to change it, had the clearly foreseeable effect of increasing racial identifiability of Main Street School, Michigan Avenue School, and Verlinden Street School." We affirm the inference of segregative intent drawn by the District Court from continuation of the special transfer policy. A policy which allows transfers from racial minority schools to racial majority schools invites abuse, and where such abuse occurs and is ignored by school authorities it is tantamount to an authorization for white students to flee and is an obvious means for the perpetuation of segregation. *See Monroe v. Board of Commissioners*, 391 U.S. 450, 458-59 (1968); *Goss v. Board of Education*, 373 U.S. 683, 688 (1963); *Davis v. Board of School Commissioners*, 414 F. 2d 609, 610 (5th Cir. 1969). Where the foreseeable and actual result of a transfer policy is to increase the racial identifiability of schools with large minority enrollment, continuation of the policy gives rise to a presumption of segregative intent. *See Armstrong v. Brennan*, 539 F. 2d at 635; *United States v. School District of Omaha*, 521 F. 2d at 540; *Morgan v. Kerrigan*, 509 F. 2d at 589-90. That presumption was not rebutted in this record.

A similar presumption arises from the use of mobile classrooms at the Main Street School. In 1962, Main Street School was overcrowded and the Board of Education decided to add two mobile units. At the time, two predominantly white schools within walking distance of Main, Verlinden and Barnes, were undercapacity. The school board could have relieved the overcapacity at Main and, at the same time, enhanced integration in the school district by transferring students from predominantly black Main to the white schools. Instead, the Board ignored this alternative and chose to contain the black students in mobile

classrooms at Main. In 1964, parental pressure forced the Board to transport students to Walnut School to relieve overcrowding at Main.[11] In 1971-72, the reverse situation arose when Verlinden, the predominantly white school, became overcrowded. Rather than adjust boundary lines to relieve the pressure at Verlinden by transferring students to adjacent minority schools, the Board set up mobile classrooms to retain the students in the Verlinden service area. In these situations, the use of mobile classrooms at racially identifiable schools at a time when there was classroom space available in adjacent schools "had the clear effect of earmarking schools according to their racial composition. . . ." *Keyes v. School District No. 1*, 413 U.S. at 202. *See also Oliver v. Michigan State Board of Education*, 508 F. 2d at 184. Given other practices suggesting purposeful separation of the races in Lansing elementary schools, the District Court was warranted in inferring segregative intent from the Board's use of mobile classrooms at Main and Verlinden. We also affirm the District Court's finding that "the existence of relatively inferior facilities at minority schools is another indicium of the Defendants' segregative purpose," *See Berry v. School District of Benton Harbor*, 505 F. 2d 238, 242 (6th Cir. 1974), and that the Board of Education pursued a practice of disproportionate assignment of minority teachers and administrators to predominantly black schools, which, in turn, contributed to the racial identifiability of the schools. *See Oliver v. Michigan State Board of Education*, 508 F. 2d at 185; *Berry v. School District of Benton Harbor*, 505 F.2d at 242.

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[11] The District Court found that Verlinden is about 14 blocks or slightly over a mile north of Main Street School and that Barnes Avenue School is about 1.2 miles southeast of Verlinden. Verlinden was within approved walking distance of Main, although transportation would have been required to transfer students from Main to Barnes. In 1964 when community opposition to the use of mobile classrooms arose, buses were used to transport students out of their neighborhood to the Walnut Street School which was not adjacent to Main.

By 1964 it had become apparent that Lansing had segregated schools. Lincoln School was 100% black, Main Street School was 95% black and Michigan Avenue School was 74% black. Of the total black enrollment in Lansing elementary schools, 77% of the students attended these four schools. The Board of Education's response to the increasing segregation in the elementary school system furnishes additional indicia of de jure segregation. In the fall of 1964, the Board initiated a policy of transporting students out of the River Island area to schools in outlying areas in order to relieve overcrowding at minority schools and to help end the racial isolation of certain schools. The integration effort was accomplished by phasing out and closing the predominantly black schools, Lincoln and Kalamazoo, and transporting the pupils to outlying white schools. The District Court found that the 'one-way busing' program adopted by the Lansing Board of Education caused the burden of desegregation to fall disproportionately on Blacks. It also had the effect of keeping the 'neighborhood school policy' a reality for Whites, while making it chimerical for Blacks." The Court found that the distances involved in one-way busing were greater than those involved in the cluster plan which the Board of Education eventually adopted. The District Court concluded that the Board of Education's decision to place the burden of integration solely on the black students was discriminatory. In *Higgins v. Board of Education*, 508 F.2d at 793, we stated that the burdens and inconveniences of integration should not be placed discriminatorily on a particular group. In *Higgins* we upheld a voluntary busing plan for a school district which was not found to have engaged in de jure segregation and which did not, in practice, involve a one-way busing program of minority students from the inner city to periphery schools, 508 F.2d at 794. The implication in *Higgins* is clear that a program that does involve one-way busing of minority students in a system which has a history of de jure segregation violates equal protection. *See also Brice v. Landis*, 314 F. Supp. 974, 978 (N.D. Cal. 1969).

We therefore affirm the District Court's finding that the one-way busing of black children, beginning in 1965 and continuing to the present, without a corresponding effort to spread the burden of integration more equitably through the system, is an act of de jure segregation.

In 1971 the Board of Education established a second Citizens' Advisory Committee on Equal Educational Opportunity to review the 1966 Citizens' Committee report and to make new recommendations where necessary. On the basis of 1971-72 school year statistics, the Committee reported that Lansing elementary schools were "still segregated, in terms of governmental requirements." In response to the Committee Report and a civil action brought in state court, the Board of Education resolved to adopt a voluntary desegration plan. The Board adopted a "cluster plan" which involved transporting students by grade to various named schools. Only thirteen schools were involved in the three stage plan and the distances involved in transportation were relatively short, and less than those of the one-way busing of black children already in effect. Clusters one and two were inaugurated in 1972 and remained in effect for the 1972-73 school year. Cluster three began in 1973 and was in effect in 1973-74. Implementation of the cluster plan resulted in the voluntary integration of a substantial portion of Lansing's elementary schools. The Board of Education's efforts at voluntary integration ran into opposition. On November 7, 1972, a recall election was held and all five members of the Board who had voted in favor of the cluster-school plan were recalled. On January 11, 1973, a special election was held and the newly-created vacancies on the Board of Education were filled by opponents of the integration plan. On February 1, 1973, at the first meeting of the re-constituted Board after the election of officers, the members voted to amend the June 29, 1972 Policy Statement on Equal Educational Opportunity by omitting statements admitting the existence of segregated schools in Lansing

and extolling the value of racially integrated educational experiences.[12] The amended policy statement reaffirmed the "neighborhood school concept" and denied the commission of any acts of de jure segregation.[13] The Board also rescinded the

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[12] The following language was omitted from the Policy Statement on Equal Educational Opportunity at the February 1, 1973, meeting of the Board of Education:

> "It is the position of this Board that there are three ingredients to a successful program for disadvantaged children: compensatory education, improvement of self-concept, and social and racial integration. It is also the position of this Board that this school system must devise some means of providing for each of these ingredients. . . .
>
> Equal educational opportunity is most possible to achieve in schools where there is reasonable balance in the racial composition of the student population. It shall be the goal of this school district to achieve such balance. This Board of Education believes that in any racially-mixed community segregated education and quality education are not compatible and that steps must be taken to insure that the school system advances further toward the goal of true equality of educational opportunity.
>
> The Board of Education shall not knowingly establish or sustain any condition which is detrimental to a child's sense of individual worth, and shall actively seek to find ways to change these conditions when such conditions inhibit learning."

[13] The following resolution was adopted by the Board of Education at its February 1, 1973, meeting rescinding the cluster-school desegregation plan:

> "Whereas, this Board of Education recognizes that there is a wide diversity of feelings in the community to the cluster plan as an educational experiment, and, whereas there is no conclusive research or evidence to support the contention that the cluster plan, as conceived and instituted does or will improve the educational achievement of the pupils affected, and, whereas the Board feels that the neighborhood family school is preferred for elementary students by the majority of the citizens of this school district, and, whereas the cooperation of parents is essential to the well being of any school system, and, whereas, the community's financial support is vital to the operation of the school district and, whereas there are no schools in this system where an ethnically-imbalanced student population has resulted from an act of de jure segregation; now, therefore, be it resolved that in accordance with the revised policy 6121, the cluster plan as adopted on June 29, 1972, be rescinded at the end of this school year (June 30, 1973). . . .

cluster-school plan effective at the end of the 1972-73 school year. The amended resolution declared that attendance patterns which existed in 1971-72 in the kindergarten through sixth grade would be restored. The cluster desegregation plan had been in effect for several months before its rescission and had achieved a level of integration in the participating schools.[14]

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[14] The opinion below contained three charts showing the percentage of minority enrollment at the thirteen schools participating in the cluster plan. Chart I is of the schools involved in phases one and two of the plan initiated in the 1972-73 school year. Chart II is of schools involved in phase three of the plan initiated in the 1973-74 school year:

I

CLUSTERS ONE AND TWO

% Minority

Cluster One	*1967-68*	*1968-69*	*1969-70*	*1970-71*	*1971-72*	*1972-73*
Main	97%	97%	89%	90%	88%	65%
Barnes	6%	5%	6%	6%	7%	15%
Elmhurst	4%	8%	9%	9%	7%	19%
Lewton	0%	0%	1%	15%	11%	22%
Cluster Two						
Maple Hill	1%	11%	17%	17%	15%	24%
Michigan	87%	84%	90%	92%	90%	55%
Cavanaugh	1%	1%	3%	4%	4%	21%
Everett	2%	2%	2%	3%	5%	15%

II

CLUSTER THREE

	1967-68	*1968-69*	*1969-70*	*1970-71*	*1971-72*	*1972-73*	*1973-74*
Cedar	41%	41%	46%	45%	56%	67%	50%
Grand River	32%	29%	33%	38%	37%	41%	37%
Oak Park	17%	27%	32%	32%	37%	42%	39%
Post Oak	4%	4%	5%	5%	5%	7%	13%
High	28%	31%	34%	34%	34%	35%	32%

Chart III demonstrates what the effect would be of allowing rescission of the cluster plan in the 1975-76 school year:

[*Footnote continues on the bottom of next page.*]

At trial, members of the Board who voted for rescission admitted that they knew that the effect of rescinding the cluster plan would be to return black children to re-segregated schools from schools which had been integrated under the cluster plan. They also acknowledged that they had not undertaken a concentrated study of the results of the cluster plan before voting rescission. The District Court found that:

> The new Board's rescission of the cluster plan was an intentional act whose obvious, foreseeable effect would be to resegregate the schools involved, with Black children being reassigned to the Black schools, and White children being reassigned to predominantly White schools.

III

EFFECT OF ALLOWING RESCISSION AT THE PRESENT TIME
CLUSTERS ONE, TWO AND THREE,
% MINORITY

	1975-76	*Without Clusters*
Cluster One		
Main	67%	80%
Barnes	22%	14%
Elmhurst	23%	9%*
Lewton	21%	3%
Cluster Two		
Maple Hill	21%	5%
Michigan	65%	83%
Cavanaugh	29%	9%
Everett	22%	10%
Cluster Three		
Cedar	50%	57%
Grand River	51%	43%
Oak Park	43%	33%
Post Oak	13%	2%
High	32%	43%

> If the rescission per se is not sufficient to constitute evidence of de jure segregation, it is highly probative of segregative intent.

We agree. Although school authorities in a school system which has not engaged in purposeful segregation are afforded substantial leeway in formulating plans to achieve racial balance, *see Higgins v. Board of Education*, 508 F. 2d at 793, 794, where a school board has a constitutional duty to desegregate its schools, manifested by cumulative acts of de jure segregation, rescission of a voluntary desegregation plan is evidence of segregative intent. *Oliver v. Michigan State Board of Education*, 508 F. 2d 185-86; *Brinkman v. Gilligan*, 503 F. 2d at 684. *See also Bradley v. Milliken*, 433 F. 2d 897, 902-04 (6th Cir. 1970). Here, the record amply supports the District Court's finding that the decision to rescind the desegregation plan was made in the context of cumulative acts of de jure segregation which had contributed to the racial identifiability of schools in the River Island area and with full knowledge that rescission of the cluster plan would return black children to re-segregated schools. In view of the District Court's finding of cumulative constitutional violations, we need not reach the question of whether rescission of the desegregation program was, in itself, an act of de jure segregation. *See Brinkman v. Gilligan*, 503 F.2d at 697.[15]

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[15] Here, unlike in Dayton, the Lansing Board of Education by rescinding the cluster-school plan already in effect has acted "to undo operative regulations effecting the assignment of pupils [and] of aspects of the management of school affairs." *See Dayton Board of Education v. Brinkman*, 45 U.S.L.W. at 4912. In the *Dayton* case, the Supreme Court affirmed this Court's treatment of the question of rescission of a voluntary desegregation plan in *Brinkman v. Gilligan*, 503 F.2d at 697, which we adhere to in today's decision. In response to Justice Rhenquist's criticism in the *Dayton* case that the phrase "cumulative violation" is ambiguous, 45 U.S.L.W. at 4912, we wish to explain that our use of the term simply means that the Board's decision to rescind the operative cluster-school plan was made after the commission of acts of de jure segregation which devolved on the Board an affirmative duty to remedy the effects of its previous segregative acts.

The rescission of the desegregation plan must also be viewed in the context of two companion decisions by the Board of Education: the selection of a site for the construction of the new Vivian Riddle Elementary School, and the decision to continue one-way busing of black children until that construction was completed. The site selected for the new elementary school was in the most heavily black area in Lansing. The projected capacity for the Vivian Riddle School was well over 500, much greater than the 200 students enrolled at Michigan Avenue School which Vivian Riddle was designed to replace. When a new west side facility was originally proposed, it was assumed that the school would be operated under a district-wide desegregation plan. In the June 29, 1972, resolution adopting the cluster plan, the Board of Education noted that future desegregation plans would include "the opening of the new west-side elementary facility as a basis for cluster-school development." With the rescission of the cluster plan however, it became evident that Vivian Riddle would open as a segregated school. A majority of the members of the Board testified that they intended to operate Vivian Riddle strictly as a neighborhood school, if possible, knowing that the enrollment would then be 90% minority when it opened. The District Court found "that the Board's decision to place the new facility in an almost entirely Black neighborhood, coupled with its manifest intent to operate it strictly as a neighborhood school, thus guaranteeing a student body over 90% minority, is significant evidence of de jure segregation. It is a deliberate act . . . Seen as part of a pattern of actions by this Board, it proves segregative intent beyond question." The District Court also found discrimination in the Board's decision to continue the one-way busing of black children, despite rescission of the cluster plan, until construction of Vivian Riddle was completed. Patterns of school construction and abandonment, along with student assignment policies, are factors entitled to great weight in determining de jure segregation. *Keyes v. School District No. 1*, 413 U.S. at 202-03, *citing Swann v. Board of Education*, 402 U.S. at 20-21. In *Keyes*, one factor

which indicated system-wide de jure segregation in Denver was "the [school authorities'] practice of building a school . . . to a certain size and in a certain location, 'with conscious knowledge that it would be a segregated school' . . ." 413 U.S. at 201-02. School construction which promotes racial imbalance or isolation is an important indicium of a de jure segregated school system. *Oliver v. Michigan Board of Education*, 508 F. 2d at 184. *See also United States v. School District of Omaha*, 521 F.2d at 543; *United States v. Board of School Commissioners of Indianapolis*, 474 F.2d 81, 87 (7th Cir. 1973). We agree with the District Court that the decision to locate a new elementary school in the heart of the ghetto and to operate it strictly as a neighborhood school, ensuring is opening at 90% minority enrollment, demonstrates the Board's intent to continue the practice of containing black children in racially identifiable schools. We note, as did the District Court, that the capacity of Vivian Riddle is sufficient to include the enrollment at Michigan Avenue School as well as children living in service areas of the closed Lincoln and Kalamazoo schools, now attending integrated schools. The effect of the Board's decisions to rescind the cluster-school desegregation plan and to construct a large new elementary school in a heavily black area to be operated on a "neighborhood school" basis, would be to re-segregate an elementary school system which had been successfully integrated.[16] School authorities, bound by constitutional mandate to desegregate, cannot be permitted to dismantle a unitary school system and to reinstitute a dual school system. *See Keyes v. School District No. 1*, 413 U.S. at 200-01 & n. 11; *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. at 15; *Green v. County School Board*, 391 U.S. at 437-38.

Our review of the record convinces us that the District Court did not commit clear error in finding that the Lansing Board

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[16] If the new Vivian Riddle School were to be operated at full capacity as a neighborhood school, the service area it would serve would be so large that transportation of students from the periphery would be required under Board guidelines.

of Education has practiced de jure segregation in the administration of the public elementary schools. Since the 1950's when the racial composition of Lansing's west side began to change, the Board has followed policies the natural, probable and foreseeable result of which was to contain minority students in racially identifiable schools. The requisite segregative intent or purpose for a finding of constitutional violation is readily inferable from the gerrymandering of attendance zone boundaries, the granting of special transfers from minority to majority schools, the use of mobile units under circumstances which enhance the racial identifiability of schools, the one-way busing of minority students, the discriminatory assignment of minority faculty and administrators, the relative inferiority of facilities at minority schools, the rescission of the cluster-school desegregation plan, and the choice of location of the new Vivian Riddle School coupled with the decision to operate it as a neighborhood school so that it is certain to open as a segregated facility. While purporting in theory to follow a racially neutral "neighborhood schools" policy, the Board in practice has adhered to a policy of "neighborhood schools" where it justifies racial segregation of students and deviated from the policy when necessary to prevent meaningful integration of the elementary schools. Examples of the latter practice are the gerrymandering of attendance zones to match the racial composition of service areas with the predominant racial profile of particular schools, the special transfer policy which allowed white students to escape from their neighborhood schools to white schools outside their neighborhoods, and the policy of one-way busing of minority students. We also have considered the Board's contention that it was denied a fair trial and find it to be totally without merit. The judgment of the District Court is affirmed.[17]

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[17] By enjoining implementation of the resolution rescinding the cluster school desegregation plan, the District Court maintained the status quo ante pending resolution of the final remedy. Since the injunction is amply warranted by the findings of constitutional violations made by the District Court and affirmed by this Court, it complies with the guidelines set down by the Supreme Court in *Dayton Board of Education v. Brinkman*, 45 U.S.L.W. at 4913-14.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-600

LANSING BOARD OF EDUCATION, a Body Corporate; and Members of the LANSING BOARD OF EDUCATION; viz., VERNON D. EBERSOLE, CLARE D. HARRINGTON, MICHAEL F. WALSH, RAY A. HANNULA, JOAN HESS, J. C. WILLIAMS, BRUCE ANGELL, JOSEPH E. HOBRLA and MAX D. SHUNK,
Petitioners,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Lansing Branch; CYNTHIA TAYLOR, JUDITH TAYLOR and ANDREA TAYLOR, by Their Father and Next Friend, JAMES R. TAYLOR; MELINDA LEA HEDLEY, CHRISTINE MICHELE HEDLEY, DOUGLAS JOHN HEDLEY and DANIEL JOSEPH HEDLEY, by Their Mother and Next Friend, JOAN L. HEDLEY; PETER MILLER and ELIZABETH MILLER, by Their Father and Next Friend, CHARLES MILLER; FRANK J. PENNONI and JAMES PENNONI, by Their Mother and Next Friend, KATHLEEN PENNONI; and DAVID KRON and LISA KRON, by Their Father and Next Friend, WALTER V. KRON,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit

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To the United States Court of Appeals for the Sixth Circuit

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Volume II

EXCERPTS FROM TESTIMONY OF KATHRYN BOUCHER,

*[602] called as a witness by the Plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Davis:

Q. State your full name and address for the record, please. A. Kathryn A. Boucher, 1414 Lorraine, Lansing.

Q. Mrs. Boucher, have you had in the past any association with Lansing Board of Education? A. Yes, I was a member of the Board from July 1965 until recalled in November, 1972.

Q. And you indicate that you were recalled in '72? A. Yes.

Q. Did there come a time, Mrs. Boucher, when you took a position with respect to the closing of Lincoln and Kalamazoo Street Schools? A. Yes.

Q. Can you indicate what that position was? A. I believe that I supported the closing of both of those facilities.

Q. In retrospect, Mrs. Boucher, do you believe that that had a discriminatory effect?

* * * * * * *

[603] A. What would you like me to answer?

Q. Do you have an opinion with respect to the closing of those schools? A. In regard to discrimination?

Q. Yes. A. As to whether or not it was discriminatory, yes, I think they were both discriminatory by definition. At least by mine, but I believe that that was the way that we felt was—the way to go at the time that we did it, on advice of community members, and probably on **[604]** our own feelings as to what the community would accept. But it certainly was discrimina-

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* Numbers appearing in brackets in text indicate page numbers of original stenographic transcript of testimony.

tory, because we were suggesting that young children of a particular ethnic background be transported to another facility, and that's discriminatory, because they are the only ones that were there.

Did we know what—I knew what I was doing. I don't know—I can't speak for anybody else. Did I think it was discriminatory? Yes, I did. Did I think it was important to do it at that time? Yes, I did. But I think I recognized that it was discriminatory at the time, too.

* * * * * * *

[606] Q. Directing your attention to transfer policy, did you know, have an opinion as to whether or not the transfer policy was being misused while you were on the Board? A. While I was on the Board?

Q. Yes. A. Yes, I think—yes.

Q. When did you become first aware that it was being misused? A. I served on a Citizens' Committee for Lansing Schools. I think it was called a School Needs Committee, and from 1959 to 1961, and one of the recommendations of that Committee, coming from the Committee that I chaired, the sub-Committee that I chaired was that the transfer policy be eliminated because we felt that it was being misused at that time.

Q. And that was in 1961, did you say? A. Correct.

Mr. Davis: I have no further questions. Your witness.

Cross-Examination of Kathryn Boucher

By Mr. Newman:

Q. Now when you say the transfer policy was being misused, do you apply that to—or, I will withdraw that. The transfer policy was open to anyone, was it not? **[607]** A. Correct.

Q. And it was used by anyone who felt they had a need and went to a doctor or a psychiatrist to—— A. Doctor, I believe, it was at that point, Mr. Newman.

Q. Later on a psychiatrist? A. Which was rescinded.

Q. All right. But let's do it one at a time. A. Yes.

Q. First of all, it was a doctor? A. Correct.

Q. Then it was a doctor or psychiatrist? A. I was not a member of the Board when the original policy was adopted.

Q. You were a member in 1967 when it was amended to require a psychiatrist's evaluation? A. Right, but it was adopted —I am not even sure when it was adopted. Maybe you can tell me.

Q. Yes. January 1967. A. Was that the original—which one was adopted then?

Q. That was the one that you were a member of. A. The psychiatrist?

Q. Yes. A. What one for a doctor, what one was—or, was that a doctor?

Q. Well I assume that was back in 1961. **[608]** A. No, I don't think so. We suggested that a psychiatrist be used in 1961 as opposed to a doctor, because we believed the policy was being abused by suggesting—having only a doctor make the recommendation. So that it must have been, and my recollection really is not very good, that a—it was possible to transfer youngsters with a doctor's recommendation in 1961, and we recommended that a psychiatrist be used as opposed to a medical doctor. Then evidently it was in 1967 by the time the Board was willing to make that change, if that is what it says.

Q. And then in June of 1967 the Board rescinded the requirement that it be made by a psychiatrist? A. Yes.

Q. Were you on the Board in 1967? A. Yes, I was.

Q. Now are you stating that the transfer policy was misused on the basis of medical knowledge? A. On the basis of medical knowledge it was misused?

Q. Are you stating that on the basis of medical knowledge? A. Certainly not. On the basis of practical application as to what was happening.

Q. Well, did you ever have an investigation made to find out whether or not the certificate signed by the doctor was valid or invalid? A. I believe that the District——

[609] Q. No, no. Did you? A. No, certainly not. Absolutely not.

Q. And the Board did not, either, did it? A. The Board, as a matter of policy, accepted the recommendation of the medical doctor, because that was the policy of the Board, and my Committee originally suggested they use a psychiatrist, because they believed that a medical doctor was not sufficient to make this kind of a recommendation. That was our opinion and that's what we recommended.

Q. Without any expert testimony whatsoever, isn't that true? A. I don't know what you would consider to be expert testimony.

Q. Did you have any testimony or did you have any information from a doctor or a psychiatrist that any one of the certificates that had been presented was invalid? A. I don't think so, no. I don't believe we did. That was based on our knowledge of what the kinds of youngsters that were being transferred and what we considered to be an abuse of transfer.

Q. Without having explored to find out whether the medical certificate was valid, isn't that true? A. Right, we felt that if it were necessary——

Q. All right. That's—— A. If a youngster was being transferred on a medical certifi- **[610]** cate and we needed a stronger

one than a medical doctor, because it was generally an emotional need, we felt that a medical doctor would have difficulty in establishing emotional need, a psychiatrist ought to.

Q. Without ever having checked with any doctor to find out, isn't that true? A. Not on an official basis, correct.

Q. Nor on an unofficial basis? A. I didn't say that.

Q. Did you ever check with a doctor who had written one of these certificates? A. Not specifically on specific youngsters, no.

Q. You are aware of the fact that Caucasians and Negroes were both permitted to present certificates, are you not? A. Right.

Q. And you are aware of the fact that by numbers, at least, there were more of the blacks who were using transfers than Caucasians for the years that you were on the Board, isn't that true? A. So it seems.

Q. Now you have testified today that you personally felt that closing Lincoln Street School and bussing the children out was discriminatory? A. Yes, I do.

Q. And you felt that at the time? **[611]** A. Yes, sir.

Q. But you never had that recorded in the minutes, did you? A. Well, I think——

Q. I did not ask you—— A. I really don't know. I did not request things to be recorded in the minutes or not. I voted. It says there I supported it, and I say here I support it. You ask me why I supported it, and I am suggesting why.

Q. I didn't ask you why. I asked you if the minutes reflected any statement by you that you thought this was a discriminatory action. A. I don't believe so. Does it say that I say is isn't a discriminatory action?

* * * * * * *

[612] Q. You were aware of the fact that the black community supported the closing of Lincoln School, were you not? A. Yes, I was, absolutely.

Q. And received commendatory letters from members of the black community? A. Yes, sir, absolutely.

Q. Including the President of the Lansing—or, the Lincoln School PTA? A. I wouldn't be surprised. It was accepted, no question.

Q. Well, it was requested? A. What are you saying? Who requested it?

Q. The black community people requested it? A. No, I don't believe——

Q. Some of them did? A. I don't believe that is exactly accurate, Mr. Newman.

Q. Do you know anyone besides Dorothy Durham (Spelled phonetically) who was opposed to it? A. I didn't know Dorothy Durham was. I can't identify at this point who was supportive and who was not. I remember at the time that there were members of the black community who did not support closing of the school. It was not economically feasible to continue that school. The attendance area was shrinking. That was one reason. The black community did support the closing of the school, **[613]** there is absolutely no question about it. The question to me was not did the black community support closing of the school or not; the question to me was did I think it was discriminatory, and I did. I still do, so——

Q. But at least on the record there is no reflection of your expression of that opinion, is there? A. I really can't tell you, because I haven't read the minutes. You are telling me there wasn't; I believe you.

Q. Well, thank you. A. You are welcome.

Mr. Newman: That is all I have.

Mr. Davis: Nothing further.

The Court: Kathryn Boucher.

The Witness: Thank you.

The Court: Just a minute.

The Witness: Oh, you have got some questions?

The Court: Yes.

The Witness: All righty.

The Court: When you made your decision to close the schools or to transfer students out from the dominant black schools, you could foresee the consequence of that act, couldn't you?

The Witness: Yes, I could.

The Court: So at the time you made your **[614]** judgment to do precisely what you did, you knew what the results would be?

The Witness: I can't say I knew precisely, but generally, yes, I think it was with the knowledge of that.

The Court: And at that time you intended that kind of an act?

The Witness: That? Yes, I felt that it was a——

The Court: A transfer?

The Witness: A temporary kind of thing. You don't want my usual speech, I am sure, Judge, on the subject of——

The Court: If you have a written copy, why you can show it to me.

The Witness: No, I don't have a written copy, but I am sure there are members in the Court here that have heard it. I felt it was transitory, and I always felt it was a temporary kind of thing that eventually the community atmosphere would develop that would allow and encourage natural integration in neighbor-

hoods. And that this was a step, it was acceptable in the black community, it was acceptable in the white community, and that's not to say that either accepted it completely. They didn't. You would be surprised if they did. They **[615]** didn't. But it was working, and so it was good.

The Court: All right.

* * * * * * *

EXCERPTS FROM TESTIMONY OF HORTENSE G. CANADY

[61] Q. Did there come a time, Mrs. Canady, in which you became aware that there were in fact recall petitions suggesting a recall of certain board members? A. Yes.

* * * * * * *

Q. Can you tell me when you first became aware of their existence? A. Early in April.

* * * * * * *

[75] Q. Let me ask you, perhaps, a more difficult question, Mrs. Canady: You were aware, I believe you testified, of the recall petitions in the spring of this year; is this correct? A. That is correct.

Q. And this was before the adoption of the plan, is this correct? A. Yes.

* * * * * * *

[14] HORTENSE G. CANADY,
called as a witness by the Plaintiffs, being first duly sworn, testified as follows and hearing on Preliminary Injunction:

Direct Examination

By Mr. Davis:

Q. Would you state your name and address, please? A. Hortense G. Canady, 3808 West Holmes Road, Lansing, Michigan.

Q. Now, Mrs. Canady, did you have an opportunity to serve on the Lansing Board of Education? A. I did, yes.

Q. And were you on that Board of Education in June of 1972? A. In June of '72, yes, I was.

Q. And did there come a time at which the Board of Education adopted a cluster plan? **[15]** A. Yes.

* * * * * *

[19] Q. Mrs. Canady, did you have an opportunity to serve on the Education Committee for the NAACP? A. Yes, sir.

Q. And did you have occasion during the years 1963 through '65 to engage in a study concerning integration or segregation in the Lansing schools? A. Yes, quite—in a variety of areas.

* * * * * * *

EXCERPTS FROM TESTIMONY OF

[339] DR. I. CARL CANDOLI,
called as a witness by the Board of Education, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newman:

Q. Will you state your name in full? A. I. Carl Candoli.

Q. And you previously testified in this case, did you not? A. Yes, sir.

Q. And your position with Lansing School District is what? A. Sometimes I wonder.

I am sorry. Superintendent of Schools.

Q. And how long have you been Superintendent of Schools? A. Four years and four months.

Q. And were you Superintendent when the so-called "Cluster Plan" was adopted? A. I was.

Q. And you continued to be Superintendent since then? A. Yes, sir.

Q. Now, I would like to ask you a few questions concerning some of the individuals employed by the Lansing School District, and particularly with reference to the matter of race. In Lansing School District are there deputy **[340]** Superintendents? A. There are, two.

Q. And who are they? A. Dr. Matthew Prophet and Dr. Robert Chamberlain.

Q. Now are these—are they co-equals? A. Yes, I would say so.

Q. And would you state what their color is? A. Dr. Prophet is black, Dr. Chamberlain is white.

* * * * * * *

Q. Now is the hierarchy, is one above the other? A. Yes, I would say that Dr. Prophet is more immediate heir, h-e-i-r.

Q. Oh, I thought you said "error." A. No. Well, in some instances that holds true.

Q. You told me the other day he is smarter than you are? A. That's a fact. That's why he is Deputy.

The Court: Well, maybe he is considered as the first Vice President, and Dr. Chamberlain as the second Vice President.

The Witness: That is a fair analysis, yes.

Q. And who is the Director of elemetary education in Lansing School District? A. Mrs. Eva Evans.

Q. And is she black or white? A. She is black.

[341] Q. And who is the School Board attorney? A. Mr. Stuart Dunnings.

Q. And is he black or white? A. He is black.

Q. Now, we are concerned in this litigation about the elementary schools in Lansing School District. Do you happen to know how many principals of the elementary schools come from the minority ethnic groups? A. It is either 10 or 11 out of 48.

Q. Are there 48 schools? A. That's right.

Q. And are some of those elementary principals from the black race? A. 8 or 9. I am sorry, I would have to check my records on that.

Q. And are some from the Spanish surname? A. There are two Chicanos.

Q. Now were you acquainted—I will withdraw that. You are acquainted with the Board members who adopted the Cluster Plan June 29, 1972, are you not? A. Yes, sir.

Q. And do you recall the names of the five who voted in favor of the Cluster Plan? A. I do.

Q. And who were they? **[342]** A. Mr. Rosa, who testified the day before yesterday. Mr. Beers, Mrs. Boucher, Mrs. Nussdorfer, and Mrs. Canady.

Q. And were any of the five whom you have named black? A. Yes. Mrs. Canady is black.

* * * * * * * *

Q. Now from having reviewed—I will withdraw that question. Have you had occasion to review Board minutes and

Board records pertaining to Board membership prior to the time you came to this school? A. Yes, sir.

Q. And you were in court the other day when Mr. Rosa testified? A. I was, yes.

Q. And he indicated he had been a Board member for 17 years? A. Yes.

Q. From the records, from having reviewed the records, do you know of any other Board members who have served that **[343]** long? A. Oh, yes. Mr. Rosa and Mrs. Nussdorfer and Mr. Ebersole, I believe, were the three that had the 17- or 18-year tenure, although Mr. Walsh, who left the Board as I was coming onto the Board, I believe he was replaced by Mr. Michael Walsh, had had at least 12, perhaps longer, of service to the Board, and Mr. Beers and Mrs. Boucher, I think, were in their second term at the time of the recall.

Q. Now on the basis of having reviewed Board minutes and Board records concerning the activities of the Board members whom you have named, have you ever found anything to indicate that those Board members acted or failed to act for purposes of discriminating against any ethnic group in Lansing School District? A. No. I think Mr. Rosa covered that very, very well, and I support what he said when he said that there were no overt acts of deliberate discrimination on the part of the previous Boards. I also agree with his statement, however, that all of us at one time or another commit unconsciously certain acts that must be called to our attention that do in fact cause severe damage. So I would support Mr. Rosa's testimony 100 percent. I don't think that the Board has ever deliberately and systematically set out to do a bad deed. I do think, however, as Mr. Rosa said, that there have been occasions when all of us, **[344]** myself included, have either—well, I prefer to say "subconsciously" reacted in a manner other than the appropriate manner.

* * * * * * *

[373] Redirect Examination of Dr. I. Carl Candoli

By Mr. Newman:

Q. Dr. Candoli, with regard to the Clusters known as 4 and 5 in the proposed plan which you recommended to the Board of Education on October 9, 1975, you relied upon certain or you employed certain guidelines as to your definition of a minority school, did you not? **[374]** A. Yes, sir.

Q. And what were those definitions or what were those guidelines that you relied upon? A. They were the guidelines that we utilized four years ago as we developed the original Cluster, and the guideline then—and we held that—was that any school that was over 45 percent minority was considered a racially imbalanced school.

Q. And what was the 10 percent? A. Oh, the 10 percent was the minimum range. The range of suitability, as we utilized it four years ago, was the 10 to 45 percent range, and that was derived from a number of papers that have—I don't know as they have been published, but they were, the Department of Education, Michigan Department of Education guidelines that were predicated on a plus or minus 20 percent factor from the minority population of the School District, and they were adjusted from there for our own purpose.

Q. Now, how many schools——

The Court: What was that number?

The Witness: The State Department had some preliminary publications that have never really been distributed, but the figure——

The Court: On a 10 to 20 basis.

The Witness: No, it was plus or minus **[375]** 20 percent from the actual percentage of minority students in the school system. And in the case of Lansing, for example, at the time we went into this it was 25 percent minority. Plus or minus, it

would have been from 5 to 45. My own very real concern suggests that with the 5 percent distribution there isn't sufficient support system for a youngster to make it at all, and we felt that 10 percent was a more acceptable figure for us.

Q. Were these guidelines also found in any of the Federal programs? A. Some of the Federal HEW guidelines allude to that, yes, sir.

Q. 10 to 45 percent? A. No. Plus or minus 20 percent over the actual percentage figure of minorities in a school system.

Q. Would you give an example to illustrate? A. Okay. Suppose Grand Rapids, which is about 28 percent minority, were directed to desegregate. The guidelines might be from 8 percent to 48 percent would be an acceptable range of schools with desegregated student enrollment, and anything outside of those guidelines would be either unbalanced majority or unbalanced minority.

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EXCERPTS FROM TESTIMONY OF
[454] DEWARD A. CLARK,

called as a witness by the Defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newman:

Q. Will you state your name in full, please? A. Deward Clark, Deward A. Clark.

Q. Where do you live, Mr. Clark? A. I live in Lansing, Michigan.

Q. And how long have you been a resident of Lansing, Michigan? A. Since 1940.

Q. And are you married? A. Yes, sir.

Q. Do you have children? A. Yes, two.

[455] Q. Are they grown? A. Yes.

Q. Now, are you employed at the present time? A. No, I am retired from the Lansing School District.

Q. When were you first associated with the Lansing District? A. 1940.

Q. And what was the nature of your association? A. I was a teacher at Walter French Junior High School.

Q. What did you teach? A. I taught Social Studies the first year, and the next year Science, General Science.

Q. And where did you obtain your degrees? A. My B.A. Degree was Battlecreek College; Master's Degree, Michigan State University.

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[457] Q. How long were you the Assistant Director in the Pupil Personnel? A. Up until 1961. I became Assistant Director of Teacher Personnel.

Q. And how long did you remain in that position? A. Until I retired. I became the next year the Director and Assistant Superintendent in Personnel, and then retired in 1974.

Q. Now, when you were director of Teacher Personnel, what were your duties? A. The main duty at that time was the recruitment of teachers and placement on all levels, and also all the other employees.

[458] The Court: What, may I have the dates again?

The Witness: That was 1961 to '74. I was Director from '62 on.

Q. What was the policy that you were obligated to observe in employing personnel for Lansing School District? A. The policy we worked under was to employ the best possible teacher we could for the position in mind. We were given those—the rationale for positions came from principals, and we went out and tried to recruit people that they needed for given jobs. This was on all levels.

As you know, during the '60's, especially the first two-thirds of the '60's, teachers were extremely hard to get, and we recruited all universities and colleges. We recruited all universities and colleges in Michigan, and then the Big Ten. We also were obligated at that time through requests of the Board of Education and the Principals on their special needs to try our best to recruit minorities.

Q. And how did you go about trying to recruit minorities? A. We went to Fisk University.

Q. Where is Fisk University? A. Fisk is in Nashville, Tennessee. We went to Hampton Institute in Virginia. We went to Howard University in Washington, D.C. Later in the 60's we employed a black **[459]** consultant in personnel, Margaret Groves, and she took charge with Mark Burkholder of minority recruitment. We extended the recruitment then to the Atlanta Complex which is about five colleges; also Tuscaloosa in Alabama, and had, I would say, quite a bit of success in recruiting minorities.

Later on we went into the Chicano territory, and we recruited form Texas, the Rio Grande Valley, the colleges there; San Marcos, just north of San Antonio; and Kingsville, the big State College; The Pan American College in Edinburg, Texas. Also Arizina, New Mexico, and California.

Q. Did you participate in any of these searches for teachers? A. Yes, I did. Originally I went to the first colleges I named, and then after we hired Margaret, she took over and did that type of recruiting. And I did start—I went out and set the pace

in Arizona, Texas, Mexico—or, New Mexico and California, and then Mark Burkholder followed.

Q. Now when was Mrs. Groves employed? A. I don't have the exact date in mind. I have been retired two years, so you see what's happening.

I think in about—she has been with us for six or seven years.

Q. Is Mrs. Groves still employed by Lansing Schools? A. She is, yes.

[460] Q. In what position? A. She is consultant in personnel.

Q. And you mentioned that minority teachers were recruited at Fisk University or Fisk College? A. Fisk, Hampton Institute, yes.

Q. Now are these black schools? A. Yes.

Q. And originally who visited those schools? A. I went the first time, and then Margaret took over.

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[462] Q. Now, how were teachers assigned to elementary schools in Lansing School District? A. Elementary schools at that time——

Q. What time are you talking about? A. I am talking in the 60's and the first part of the '70's. Elementary principals, I am sure you understand, don't work the full year and they are not there during the summer months. While the principals were there and the recruiting that we did in the spring, they were given the opportunity to interview applicants that we were able to send to them, and they would make their final decision to the personnel office indicating which one of the applicants they wanted. They would tell the personnel office what to look for when we went South or when we **[463]** went to any of the other universities and what their needs were early in the spring, if possible. Many times it wasn't possible because openings developed even after they left on their vacation.

So the personnel office went out and recruited for openings then. We might have had a hundred elementary teachers to hire, and we would hire those teachers. Many of those then were not interviewed by principals, so the Director of Elementary Education, with the help later when we had Margaret Groves, with her help and help from her staff, which are helping teachers, and these are teachers that are superior teachers that work with teachers. They are on her staff. They would sit down and——

Q. Whose staff? A. It was Grace Vanworth at the time, Director of Elementary Ed, her staff helping teachers. They would sit down and make the assignments trying to relate the background, the kind of teacher we had with the job that was open, and we would make the assignments then from the personnel office.

Q. Now Mrs. Evans is Director of Elementary Education in Lansing School District, is she not now? A. Yes, sir.

Q. And do you remember when Mrs. Evans joined Lansing School **[464]** District as a teacher, or do you not? A. I don't recall the exact date, but I certainly remember Mrs. Evans, yes.

Q. And why it is you remember Mrs. Evans? A. Because she is an outstanding teacher.

Q. And she has progressed through the Lansing School District, is that correct? A. That's correct. She is Assistant Principal at C. W. Otto Junior High School.

Q. She was or is? A. She was, yes, sir.

Q. And then she became Director of Elementary Education? A. Right.

Q. Now during the time you have been connected with the Personnel Office of Lansing School District, has there ever been any complaint from anyone about the number of minority

teachers assigned in minority schools? A. I personally do not recall any complaint directly from parents, nor from principals.

Q. And has there been any complaint from the Spanish surnamed people about the assignment of Spanish surnamed teachers to schools where there are substantial number of Spanish surnamed children? A. No. The only complaint coming from the Chicano committee—they have a committee representing the community **[465]** that works with the Board of Education—was that we couldn't get enough.

Q. They wanted more assigned? A. Yes, sir.

Q. Do you know of anyone who has ever discriminated against any minority teacher in the matter of employment or assignment of duties in Lansing School District? A. Well, would you rephrase that? Do I know whether anyone was discriminated against on purpose?

Q. Yes, on purpose? A. Or intent?

Q. Yes. A. No.

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[466] Q. All right. How are the assistant principals and principals selected in Lansing School District? A. Assistant principals and principals are selected by a personnel committee. They first make application to the Personnel Office, and I don't believe in the last couple of years that has changed. They make their application. There is a Personnel Committee. On the Personnel Committee, for example, if it is an assistant principal, sits the principal of that given school where the vacancy exists. Also the Director of Personnel and the Director of Secondary Education, if it is secondary, or elementary, if it is elementary, and a given number of community people generally are on these committees.

Q. What do you mean community people? A. I mean people that are representative of a given community. While this may be a PTA person, it may have nothing to do with PTA, but somebody that's been active and inteersted in education

from that community. If it's a position—well, the last one I can recall, there were three community people, two of them were black and there was one white. We have had Chicanos on the Committee also.

Q. And they participate in the selection? **[467]** A. In the final selection, yes, sir. And that recommendation then goes to the Superintendent of Schools, who in turn will recommend to the Board of Education.

Mr. Newman: You may cross-examine.

Cross-Examination of Deward A. Clark

By Mr. Davis:

Q. Did I understand you correct, Mr. Clark, to indicate that you have been directly involved in teacher personnel since 1961? A. Yes, sir.

Q. And can you indicate what the situation was that you found in 1961 in terms of employment of minorities, numbers? A. Yes. Of minority, we had very few minority at the beginning of 1961.

Q. Can you indicate—you have an affirmative action policy, do you not, with respect to minority teachers and staff? A. Yes, sir.

Q. Do you know when that policy went into effect? A. The exact date, I would say perhaps four years ago.

Q. Would I be correct in assuming then there was not an affirmative action program for teachers and staff prior to 1971? A. You might be correct in saying there wasn't a written policy, but there certainly was in the Personnel Office and from the oral statements of the Board of Education, **[468]** I considered it an affirmative action policy. That's why way before the written policy we were out on the road recruiting from the various colleges that I indicated.

And just one more thing. As I said, there were very few at the beginning of 1960 and there was a gradual, not as big as we wanted, but a gradual increase in the employment and the percentage, the ratio of minorities to non-minorities.

Q. Were you also in charge of assigning those teachers that were hired? A. I did not assign them directly. The secondary principals interviewed for secondary, the elementary principals, insofar as possible, interviewed for elementary. Those that couldn't, they were out on vacation and so forth, that assignment came from the Director of Elementary Ed working with the consultant in Personnel and her staff making final assignments.

Q. Well, who had the final say, if anyone, in terms of assignment? Did you have a veto power at all? A. If we did, it was never used. I wasn't aware we had a veto power over a principal, and the principal has the final say, period.

Q. Well, that about in terms of assigning principals, who had the final say in that regard? A. I believe I spelled out the way principals were hired. **[469]** They were hired by a Personnel Committee. No one person. However, if you check the policy of the Board of Education, the Superintendent has an actual veto on hiring, because it says he has full charge of hiring. And I was working through the Superintendent in terms of hiring.

Q. Well, let me ask you this: When you first took over these duties in 1961, were there any black principals? A. 1961?

Q. Yes. A. No.

Q. Do you recall when the first black principal was hired? A. I don't recall the exact date, sir.

Q. Do you recall who it was? A. As a principal?

Q. Yes. A. It could have been Cal Anderson.

Q. Let me ask you a different question: Do you recall what school this black principal went to? A. Well Cal Anderson was an Assistant Principal at West Junior High School.

Q. All right. Elementary School principal? A. Elementary school perhaps was Olivia Letts.

Q. And where was she assigned? A. I don't know whether she was Cedar Street or where at that **[470]** time.

Q. Isn't it a fact she was assigned to Lincoln Street School? A. Could be.

Q. You don't recall? A. Not exactly, no.

Q. Isn't it a fact—— A. That probably was before my time as Personnel Director.

Q. Isn't it also a fact when you took office or took the Director of Teacher Personnel Office in 1961, that Lincoln was a black school? A. Yes, it was.

Q. Referring now, for the Court's benefit and co-counsel's benefit, to Plaintiffs' Exhibit 21, directing your attention to Page 167——

The Court: What is Plaintiffs' Exhibit 21, do you have that? "Report to the Human Relations Committee."

By Mr. Davis:

Q. Now you indicated you had at least some responsibility in the assignment of teachers, is that correct? A. In the way I indicated, yes, an indirect.

Q. This chart on page 167 purports to show the number of minorities at the various elementary schools, do you see this? **[471]** A. Yes.

The Court: What chart is that, what page?

Mr. Davis: 167. It is towards the very end.

The Court: All right.

Q. It purports to show the number of minority, administrators and teachers and librarians, for the year 1963-64, is that correct? A. Yes.

The Court: Can you indicate by virtue of that chart which schools seem to have a minority principal, which would be in the second column there under "Administration"?

The Witness: Here on the first page it indicates Lincoln, one. On the second page it indicates Walnut, one.

The Court: This was in '63 then?

Mr. Davis: '63, that's correct.

By Mr. Davis:

Q. Now in terms of teachers, which would be in the second column from your right, can you indicate which schools have the minority or have minority teachers in excess of one? A. In excess of one, there was Lincoln had 3, Allen had 3.

[472] Q. All right. Lincoln had 3 of 7, is that correct? A. Three of 7.

Q. Plus the administrator? A. Yes.

Q. And—— A. Allen had 3 of 26.

Q. Now before we go further, isn't a fact that in that period of time, 1963-64, that Allen was becoming heavily minority? A. Well, it was becoming heavily minority, but it didn't happen all at once. It was a slow process.

Q. But it was one of those schools that had the most minority students in it, was it not? A. Well, I couldn't say. I don't have those figures in my fingertips.

Mr. Davis: I direct the Court's attention to page 9 of this Exhibit, which shows the minority count for Allen.

Q. Now I would ask you to tell me whether I am correct that they had 149 minorities out of 516? A. You are asking me?

Q. Yes. A. That's what this chart says, yes.

Q. Okay. Directing your attention then back to Page 167, can you indicate the next school that has more than one **[473]** minority teacher? A. Michigan Avenue.

Q. And that was a black school, was it not? A. Yes.

Q. And the next one? I think we skipped one here. Do you see this school here, Main, can you tell me what they had in minority teachers? A. You told me in excess. They had 1.

Q. In excess of 1, they had 1. That is Lincoln. And Michigan, correct? A. And Michigan, but Main was one. However——

The Court: So Lincoln had 3, Main 1?

The Witness: Yes.

The Court: And Michigan 3?

The Witness: Michigan 3, yes.

The Court: Out of 13 in Michigan and——

The Witness: 26 in Allen.

The Court: 26 in Allen?

The Witness: Yes.

The Court. All right.

By Mr. Davis:

Q. Were you aware of the fact that the predominately minority schools tended to have the most black teachers when you took your position? A. Yes, I was perfectly aware of that, and the Board at the **[474]** time in our discussions had discussed with me the situation and the possibility—not "possibility," but what we should do was to hire minority teachers and make sure from thereon that we were not loading them into an all-black school. I remember at a meeting with some of the representatives of NAACP, at that time there was a gentleman, a minister,

I believe it was, had got up, and we explained to him that our philosophy was, and would be from there on when we recruited, to try to scatter the minority teachers. We had little difficulty when we came to the Chicanos, because the Chicanos had a specific need, a language need, and the scattering of them didn't make good sense, because we were trying to hire minorities there that spoke Spanish and could help the youngsters on the early grade level, so there would be no doubt some concentration there, and that made sense to have it there. But we did go into the idea of spreading the teachers about.

The minister made the point that afterall, the white people should have the chance of associating with the black people. We felt at the time that the black teachers should be in the white community as well as in the black community.

Q. In light of that stated policy that you indicate you adopted when you took over, let me ask you about some **[475]** particular schools. First of all, about Michigan. We indicated, I believe, that Michigan had three teachers. A. Yes.

Q. At that time? A. Yes.

Q. And you adopted a policy of not assigning black teachers to just black schools, is that correct? A. This is what we tried to do, yes.

Q. You were not present yesterday when Mr. Semrau testified, were you? A. No, I was not.

Q. Well, let me indicate what his testimony was and ask you if that is your recollection.

He indicated—

(To Mr. Newman) And correct me if I am wrong, Counsel—that in 1968-69 there were 3 of 14 minority teachers. He indicated in the next year, 1969-70, that it had got up to 4 of 13. Do you recall an extra teacher being added to Michigan after this policy? A. No, but with federal programs going on, this could well have happened.

Q. He indicates in the next year 1970-71 there were 5 of 13. A. Now I don't know the reason for that, but I am pretty sure it came through Federal funds and funding, especially **[476]** for that school. If we could hire a minority that seemed to have more than the white at that period, we would put her there.

Q. I didn't quite understand that? A. If we could hire a minority that seemed to have a better background for that given position at that time, she no doubt was put over at Mr. Semrau's school in Michigan Avenue.

Q. Do you recall that happening? A. No. I say specifically I don't recall who was put there or why. My opinion is it was related to Federal funds and Federal programs.

Q. But you do know that it is a fact that after you took over your position, that the percentage of minority teachers at Michigan did in fact increase? A. Yes. However, let me say something: The ratio was 3 to 7, as I noticed there. Did the ratio increase so much? Because you had a total staff of 14, you are talking the ratio of minority against, so let's talk in ratios there.

Q. My figures indicate 3 of 14 in 1968-69, and it went up to 5 of 13 in 1971-72. A. However, the first figure you gave me was 3 of 7. That's what I am referring to.

Q. That was Lincoln, Lincoln School had 3 of 7. I am referring to Michigan Avenue? **[477]** A. Okay.

Q. Well, was there anything done in moving to Lincoln Street School after your policy of not loading up teachers at one school, was there anything done about transferring some of the minority teachers from Lincoln, which had 3 of 7 plus the principal? A. This I don't know. The Director of Elementary Education would have charge of that.

Q. Well, let's direct your attention to another school. Main, I believe '63-64, according to Page 167 of the chart, had one teacher, is that correct? A. Right.

Q. You do know for a fact that that number increased? A. Right, and I do know for a fact that the PTA and the people at Main Street School called it one of the best faculties of the District.

Q. But the fact is that there was a deliberate effort made, was there not, to put more minority teachers at Main Street School? A. I don't know whether it was deliberate or not and what rationale the Director of Elementary Education had at that time. I know that her rationale came from the request of the principal, and his request usually came from the request of the Community. So that's all I can go on there. And my understanding was that the Community was **[478]** exceedingly pleased with the staff of Main Street School.

Q. Well, is it your understanding that was the reason why minority teachers were placed in minority schools? A. I think the reason for placing any teachers is to get the best success we can get for the children of that given community. If it happened to be a minority, that's where the minority went.

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[481] Q. Can you indicate for 1967-68 what the percentage was of minority students? A. The percentage of minority students was 14 percent.

Q. And the percentage for minority staff? A. Was 3.8.

Q. And these are contained in the bottom two lines? A. Yes.

Q. Of this Exhibit, correct? A. Yes, sir.

Q. And the number of teachers, elementary teachers in '67-68 was 39, is that correct? A. Yes. 39 black, 21 secondary black, and there were 4 black **[482]** administrators.

The Court: What, 39?

The Witness: Yes, 39 black elementary teachers in '67, and there are 21 secondary and 4 black administrators.

By Mr. Davis:

Q. And then in '68-69 it looks like there is one less black elementary teacher, 38, is that correct? A. That's right.

Q. And those numbers are reflected all the way across for each year up to 1972, correct? A. Yes.

Q. I refer you to four pages later. It should be page 39. This chart purports to show, does it not, faculty assignment by race? A. This, I am not acquainted with this chart, but this is what it looks like, yes. What date is this?

Q. This is as of—— A. This shows 8½ percent minority teachers.

Q. This is 1972, January 27, 1972. A. I see.

The Court: Now what schedule? Let's see if we are on the same——

The Witness: 35.

The Court: ——track here.

[483] The Witness: Well, this only goes through '71, but in '71 we had 9.2 percent minority staff.

The Court: Where are the dates on these charts?

Mr. Davis: That's at the beginning of the entire volume, your Honor.

The Court: Oh, I see.

The Witness: And in '72 I am sure we had more than 9 percent, yet this only shows 8.

By Mr. Davis:

Q. Now Section 4 indicates the names of schools with no minority teachers. From your recollection, would that be correct in 1972, as you remember? A. Yes, or I couldn't say specifically, but I wouldn't question it. It looks all right to me.

As I recall, the year I left in '74 there weren't any schools without minority teachers.

Q. Before referring to the next chart, just to make sure that this is within your area of experience and expertise, the assignment of teachers around the School District after they were hired, was this within your duties? A. The recruitment was in—within my duties, and the assignment, insofar as, a consultant from my office served with the Director and the Principals in the assignment. As I explained before, the Principals generally **[484]** had the say on which teacher they wanted. The Director of Elementary Ed worked with her staff and a member of my staff in making summer assignments.

Q. Would you have been aware in your professional responsibilities of the experience of the teachers at the various schools? A. I would if it were brought specifically to my attention for a given reason, but as these assignments were made, the Director of Elementary Ed certainly was aware of experience.

Q. Do you recall being made aware or having it brought to your attention that minority schools had the most experienced teachers, do you recall that ever being brought to your attention? A. No.

Q. Do you recall whether or not that was true or not? A. I don't know whether that was so.

Q. Directing your attention—and you may not know the answer; just say so—to two pages later in this volume.

Mr. Davis: Your Honor, it should be Page 41.

The Court: The pages just aren't numbered.

Mr. Davis: I know. This one.

Q. It purports to show the years of experience to various **[485]** schools. Would you be aware of whether any of these figures were correct or incorrect? A. No, I am not aware whether they would be or not.

Q. I see. Very well. Well, when you determined or found out that even after your policy minority teachers were still being

assigned to minority schools, being Main and Michigan, did you bring this to anyone's attention, the School Board, indicating that this was contrary to your policy? A. No.

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EXCERPTS FROM TESTIMONY OF

[198] GEORGE T. DAVIS, JR.,

called as a witness by the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newman:

Q. Your name is George T. Davis, Junior? A. Yes, sir.

Q. And what is your residence address? A. 526 South Chestnut Street.

Q. Lansing, Michigan? A. Lansing, Michigan.

Q. How long have you lived in Lansing, Michigan? A. 28 years.

[199] Q. And what is your age? A. 28.

Q. Now, did you attend school in Lansing? A. Yes, I attended Kalamazoo, Western, and Sexton.

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[200] Q. And you are black yourself? A. (Witness nodding).

Q. I mean, the record has to show that. A. Yes.

Q. I can tell it. A. Yes.

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[201] Q. Now, what elementary school did you attend in Lansing School District? A. Kalamazoo Street School.

Q. And at the time you went there to the Kalamazoo Street School, about what was the division of the races? A. At that

time I lived on the north side of the Main Street, 838 West Main Street, and on the south side of the Main Street, on the other side of the street, most of the kids went to—all of the kids went to Lincoln and I went to Kalamazoo Street, because I lived on the other side of the street.

Q. Now, do you know about what the percentage of blacks **[202]** was and the percentage of the whites was at Kalamazoo when you attended Kalamazoo? A. At that time it must have been around about—I would say around about under 10 percent.

Q. The number of black students would be about under 10 percent? A. Yes.

Q. And the bulk were whites? A. Yes, sir.

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EXCERPTS FROM TESTIMONY OF

[488] VERNON EBERSOLE,

called as a witness by the Defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newman:

Q. Please state your name in full? A. Vernon D. Ebersole.

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[488] Q. Are you a member of the Board of Education of Lansing School District? **[489]** A. Yes, sir.

Q. Have you had any other connection or association with Lansing School District other than as a Board member? A. Yes, sir.

Q. What? A. I was a teacher.

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Q. What did you teach? A. Music.

[490] Q. And by that, what do you mean? A. Band, orchestra, choir, glee clubs.

Q. When you taught, were there any minority students in your classes or courses or organization? A. Yes, sir.

Q. When did you first become a member of the Board of Education? A. July 1, 1955.

Q. How did you happen to seek membership on the Board of Education? A. Prior to that there was a Citizens' Committee that had been organized, and I served on that committee, and that stirred up interest in the workings of the Board of Education, so the following year I ran for the Board of Education and was elected.

Q. And how long have you served? A. Since 1955, 21 years.

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[498] By Mr. Newman:

Q. Mr. Ebersole, are you familiar with some of the sites of the elementary schools in Lansing School District? A. Yes, sir.

Q. And with regard to the matter of site size, are you able to make any general statement that applies with regard to the site size and the time that it was acquired, the site was acquired? A. That is within my term on the Board.

[499] The Court: You are referring now to the——

Mr. Newman: If the Court please, I will hand Mr. Ebersole Defendants' Exhibit 18——

Q. ——and ask you if you recognize this as a history of an account of the site size in Lansing School District? A. Yes, I do.

Q. With regard to the matter of site size, what can be said as to the size relative to the time the site was acquired? A. Well, prior to my being on the board, and just glancing down this list,

the original site sizes were considerably smaller than they are today, very much smaller.

Q. Now after you were on the Board and after annexations took place, can you say whether or not there was any increase in the site size of elementary schools? A. Yes, there was.

Q. Will you state to the Court whether or not with regard to annexations that took place the annexed school district had acquired sites before annexation occurred? A. Many had.

Q. And after Lansing School District had grown with the annexations, did the School District itself procure some sites? A. Yes, they did.

Q. And with regard to the sites that were procured by Lansing **[500]** School District, will you state whether or not there was a tendency to increase the size of the sites? A. Wherever possible, yes, sir.

Q. And how were these sites procured by Lansing School District while you were on the Board? A. Through purchase.

Q. And was there ever any indication of exchange, that you might recall? A. There could have been one or two where we had a piece of land that we figured out was not adaptable to a school site and a realtor had the land that would fit into the picture, and he and the Board would arrange a swap of those pieces of land, yes.

Q. Now where you procured sites by purchase, will you state whether or not those sites were in developed areas or undeveloped areas? A. They were, by and large, in undeveloped areas.

* * * * * * *

[501] Q. And with regard to the purchase price for sites in undeveloped areas, will you state to the Court what the price would be relative to purchase of land in a developed area? A. In relation to——

Q. Yes. If you have to buy sites where there is a built-up area with houses or buildings on it, how does that compare with the purchase of sites that I guess are undeveloped? A. The developed areas of course are much higher.

Q. Now are you familiar with—I know your testimony, but are you familiar with Beekman Center? A. Yes, sir.

Q. Is that an elementary school? A. No, sir.

Q. What kind of a school is it? A. It is for the mentally retarded, primarily.

Q. Now was that a school facility that was developed after you were on the Board of Education? A. Yes, sir.

Q. Do you recall the purchase of land for that center? A. Yes, sir.

Q. And do you recall how many acres was procured? **[502]** A. Approximately 50 acres.

Q. And do you recall the price? A. I think it was around a thousand dollars an acre.

The Court: Is that site on this schedule, Beekman?

The Witness: No, sir, it is not.

Mr. Newman: Your Honor, on Deefndants' Exhibit 17 Beekman Center is recorded 56 acres.

The Court: All right.

By Mr. Newman:

Q. While you have been on the Board of Education, has the Board of Education purchased land to expand the sites of some of the elementary schools, some of the older elementary schools? A. Yes sir.

Q. Has the Board of Education also purchased land for the Vivian Riddle School? A. Yes, sir.

Q. And do you recall what the purchase price was in general with regard to sites for Vivian Riddle School? A. They run between $350,000 and $400,000.

Q. The total? A. The total.

Q. Do you remmber how many sites there were? A. There were approximately 33 or 34.

[503] Q. And were those parcels that were purchased for the Vivian Riddle School located in a built-up area or an undeveloped area? A. In a built-up area.

Q. Now, will you state for the Court what your view of bussing of school children is? A. My view of school bussing is that we should have no bussing of youngsters except where the matter of distance and/or safety.

Q. And what was your position before you became a Board member? A. The same.

Q. With regard to bussing? A. The same.

Q. What is your position now? A. That is my position now.

Q. Do you recall that a time came when mobile units were employed in Lansing School District to house children? A. Yes, sir.

Q. Do you remember about when that was? A. It was around 1960 to '61, in that year, the early '60's.

Q. That's when it began? A. Yes, sir.

Q. Why were mobile units employed? A. Because of the overcrowding of the schools.

[504] Q. And were they employed throughout the School District where necessary? A. Yes, sir.

Q. And did a time come when some of the parents of students at Main Street objected to the use of mobile units there? A. Yes, sir.

Q. And do you recall what was eventually done with regard to the matter of using mobile units at Main Street? A. Well, a mobile unit was put in there.

Q. All right. How long—do you remember how long mobile units stayed at Main Street? A. No.

Mr. Newman: This is Defendants' Exhibit 16.

The Court: Maybe we better take a ten-minute recess for the convenience of all.

(At 11:06 a.m. a recess was taken.)

By Mr. Newman:

Q. Mr. Ebersole, do you have before you a copy of Defendants Exhibit 16? A. Yes, sir.

Q. And will you observe the column headed "1962?" A. Yes, sir.

Q. And do you see the names of any elementary schools in that column? **[505]** A. Yes, sir.

Q. What are they? A. Wainright, Main, Cavanaugh.

* * * * * * *

[505] Q. In 1962, what was the racial composition again of the elementary school? A. It was predominantly white.

Q. And what was the racial composition——

The Court: What was the answer?

The Witness: Wainright.

The Court: Wainright?

The Witness: Yes, sir.

The Court: In 1962?

[506] The Witness: Yes, sir.

The Court: And the question is what was the racial——

Mr. Newman: Composition of the student body.

The Court: The student body of Wainright?

Mr. Newman: Yes, sir.

The Court: Where do we find that out on this document?

The Witness: It isn't on the document, sir

Mr. Newman: This is memory we are testing.

The Court: All right. The memory bank?

The Witness: Yes.

By Mr. Newman:

Q. And what was the racial composition of Main in 1962? A. It was predominantly black.

Q. And what was the racial composition of the student body at Cavanaugh? A. Predominantly white.

The Court: Wainright was predominantly white also?

The Witness: Yes, sir.

[507] Q. Now the columns headed 1963 and 1964 record the same schools, do they not? A. Yes, sir.

Q. When you come to 1965, you observe Bingham, High, Cedar, Wainright, Everett, Main, Bingham, Holmes, Wainright, is that correct? A. Yes.

Q. And what was the—as you recall—the racial makeup of the student body at Bingham in 1965? A. That was predominantly white.

Q. And how about High? A. High at that time, as I recollect, was bordering on the Chicanos as a predominate.

Q. What about Cedar? A. Well, Cedar was still predominantly white, but again the Chicanos were moving in.

Q. And do you recall what the racial makeup of student body at Everett was at that time? A. That was white.

Q. And then Main? A. Main was black.

Q. And Bingham? A. White.

Q. And Holmes? A. That was white.

[508] Q. And then Wainright again? A. Still white.

Q. Now did a time come when some of the parents at Main Street School objected to the use of mobile units? A. Yes, sir.

Q. And eventually was some action taken with regard to the matter of mobile units being located at Main? A. Yes, sir.

Q. What was that action? A. The action was that the mobile unit was moved from Main.

Q. Now you have indicated that mobile units were used to relieve overcrowding. A. Yes, sir.

Q. What was done to take care of whatever overcrowding existed after the mobile units were removed? A. These—the overflow at Main were moved to another school.

Q. And I hand you Defendants' Exhibit 81——

The Court: Well, now, just a minute. Moved to another school?

The Witness: Yes, sir.

The Court: Were they assigned to another school?

The Witness: Yes, sir.

The Court: How did they get there, walk?

[509] The Witness: No.

The Court: Bussed?

The Witness: Yes, sir.

The Court: And what school was that that they were moved to?

The Witness: Walnut.

The Court: Walton?

The Witness: Walnut.

The Court: All right.

By Mr. Newman:

Q. Now 81 reflects a resolution that was adopted by the Board of Education, does it not? A. Yes, sir.

Q. And what does this relate to? A. The transfer of children from Main Street School to Walnut Street School.

Q. And at that time what was the racial makeup of the student body at Walnut School? A. Predominantly white.

Q. An ddo you know why it was that Walnut Street School was selected for the transfer of these students? A. Yes, because their room was available to put these folks over there.

Q. And what was the desires of the parents of the children? A. From Main Street?

[510] Q. Yes. A. They were very desirous to have this done.

Q. Now Exhibit 81 indicates that the motion was made by Mr. Walsh. A. Yes, sir, that is Mr. Thomas Walsh.

Q. Yes, sir. Do you recall how long Mr. Walsh served as a member of the Board of Education? A. He served for 12 years.

Q. And are you familiar with Mr. Walsh's political philosophy and how it was on Governmental and school matters? A. Yes, sir.

The Court: That is Thomas Walsh?

The Witness: Thomas Walsh, yes, sir. That differentiates from the current Mr. Walsh, who is Michael Walsh.

A. Mr. Newman: I am sorry, I——

The Court: All right. Go ahead.

Q. How would you characterize Mr. Walsh's political philosophy? A. His philosophy is very liberal.

Q. And is he a member of any political party that you know of? A. If I understand, he is a member of the Democratic Party.

Q. Have you ever known Mr. Walsh to support any discriminatory action against any minority? A. No, sir.

[511] Q. Have you ever known him to support any discriminatory action against anyone, as a matter of fact? A. No, sir.

Q. Now while you were on the Board, were citizens' committees appointed? A. Yes, sir.

Q. And do you recall whether a citizens' committee was appointed by the Board of Education in 1965? A. Yes, sir.

Mr. Newman: This is Plaintiffs' Exhibit 5.

Q. I hand you Plaintiffs' Exhibit 5, which purports to be a report of the Citizens' Advisory Committee that was appointed in '65 and reported in 1966. Do you recognize this as a document similar to which you have seen before? A. Yes, sir.

Q. And on page Roman numeral five, do you see the names of the members of the Executive Committee? A. Yes, sir.

Q. The Chairman was whom? A. Rabbi Philip Frankel.

Q. Are you acquainted with Rabbi Frankel? A. Yes, sir.

Q. And is he associated with some religious organization in Lansing School District? **[512]** A. Yes, sir, he is the Rabbi of the Jewish Church in Lansing.

The Court: I think there is testimony already in the record of Rabbi Frankel's participation in the Committee activities, and likewise with Mrs. Canady. We have had a hearing on this matter before, several hearings, and this Committee Report has been discussed before. So the Court is familiar with the fact that Rabbi Frankel was a Rabbi in the Jewish faith and actively participated in this program.

Mr. Newman: Well, your Honor, I wanted to bring out in addition that there were members of other minority groups that served, and the capacity in which they served.

The Court: Wasn't that already testified to?

Mr. Newman: I do not believe so.

The Court: All right.

Mr. Newman: Except that I know that Mrs. Clinton Canady, Jr., testified that she was a member, but I don't believe that it has been established as to the racial background of Dr. Hazel Turner and some of the other members. I was just simply trying to bring out that this committee was made up of a cross section of Lansing and included a number of blacks and some Spanish **[513]** surnamed people also.

The Court: Go ahead.

By Mr. Newman:

Q. Over the years have you been acquainted with Mrs. Clinton Canady, Jr.? A. Yes.

Q. Is she also known as "Hortense Canady?" A. Yes, sir.

Q. Do you know offhand how long your relationship with Mrs. Canady has lasted? A. Up to the—at the time of the formation of this Committee, I became acquainted with her.

Q. All right. Did she later on become a member of the Board of Education? A. Yes, sir, she did.

Q. Do you remember about when that was? A. 1969, I believe.

Q. Now do you recognize on the Committee any other members of any minority groups? A. My recollection is under the

Steering Committee, that Mr. David Duncan and Mr. Albert L. Kelley were of minority groups.

Q. And on Committee as a whole, do you recognize any other names than you have already mentioned? A. Yes.

[514] Q. And what other names do you recognize? A. Mr. Benjamin Gibson, Mr. Curtis L.——

Q. Mr. Benjamin Gibson, what is his profession? A. He is an attorney.

Q. And what minority group does he belong to? A. He is black.

Q. All right. A. Mr. Curtis Groves. He works at the Post Office, and he is a black. Grady Porter is a black. I believe he works at Oldsmobile. Mr. William Riddle, he is a black.

Q. And if there are other minority members, you don't recognize them? A. I don't recognize them as such.

Q. Now during the time that this Committee was functioning, was the Board concerned with Lincoln Elementary School and any desire of parents of students attending that school? A. Yes, sir.

Q. And what was that, what was the problem or what was going on with regard to Lincoln Elementary School while this Committee was functioning? A. The two—there were two problems: One was the population of the Lincoln School was falling off as the expansion of Oldsmobile was taking place, and the second was that the black community was quite anxious to have this **[515]** facility closed and their pupils transferred to another location.

Q. And did a time come when that was—when Lincoln School was closed? A. Yes, sir.

Q. With reference——

Mr. Newman: My problem arises from the fact that I have a copy of a Board resolution that is not marked as an Exhibit,

and yet it is in the schedule—or, it is in the Exhibits that have been received, Defendant's Exhibit 30.

The Court: See if you have it.

Q. I invite your attention to Defendants' Exhibit 30, Page 5.

Mr. Newman: Now, your Honor, up in the right-hand corner there is a number 61, but below that is July 22, 1965, Page 5.

The Court: Yes, Lincoln School.

Q. Were you at the meeting on July 22, 1965, when this resolution was submitted to the Board of Education? A. Yes, sir.

Q. And who made the motion? A. It was moved by Mr. Thomas Walsh.

Q. And who supported it? A. Mrs. Katherine Boucher.

Q. And will you state to the Court whether or not there had **[516]** been any discussion of this matter closing Lincoln School with concerned parents before the Board acted? A. Yes, sir.

Q. And was there discussion that night, if you recall? A. Yes, sir, there was.

Q. And was that motion to close Lincoln as an elementary school passed? A. Yes, sir.

Q. Did Vernon D. Ebersole vote on this matter? A. Yes, he did.

Q. And what was your vote? A. "No."

Q. And you were one dissenter? A. Yes, sir.

Q. Now, will you state to the Court what the basis of your dissent was? A. Yes, sir, and I believe it states it in the minutes of that meeting.

Q. All right. A. That the Board was moving too rapidly towards the closing of the Lincoln School, and there were many other facets which should be investigated before taking this step.

Q. Now was this facility, was this building actually abandoned by Lansing School District at that time, or was the——
[517] A. No, it was not.

Q. Or was continued use made of the building? A. Yes, sir.

Q. Do you remember for what purpose? A. For the handicapped young people, emotionally disturbed.

Q. And were there any citizens in that area who were also permitted to use the building during the—when the children were not present? A. Yes, sir.

Q. And who were permitted to use it? A. The people in the area using it as a community center.

Q. And now did a time come when that building was demolished? A. Yes, sir.

Q. Why did this happen? A. The reason for that being that facilities had been acquired for moving the people that were using the building to another location, plus the fact that Oldsmobile needed this land for their expansion purposes.

Q. Now you say that the school population had been declining at Lincoln? A. Yes, sir.

Q. What would bring that about? A. Well, I had mentioned one, the expansion of Oldsmobile. The second one was the highway expansion of 496 coming down and taking up two streets, Main Street on one side **[518]** and St. Joe on the other, which cleared out many, many homes.

Q. Are you acquainted with Mrs. Boucher? A. Yes, sir.

Q. And do you have some idea about her political philosophy? A. She I would class as a liberal, as I would Mr. Walsh.

Q. Have you ever known Mrs. Boucher to vote to discriminate against anybody? A. No, sir.

Q. Now how did the Committee that was functioning at that time respond, if you recall, to closing of Lincoln Elementary School?

The Court: What page?

The Witness: Page 9, sir.

A. According to the Committee report—and may I read this?

Q. Yes, I think so. A. "It is recommended, therefore, that as and to the extent that predominately Negro schools"—that is naming Kalamazoo, Michigan, and Main—"continue to be overcrowded, that the present policy of transporting the overflow of children to other areas in the City at large be continued and that, as and when these schools are phased out, which will be the subject of separate recommendations, all of the children from these service areas be transported to and throughout the other service areas of **[519]** the City at large, following the general policy set forth by the Board of Education in phasing out the Lincoln Elementary School."

Q. Now during this period of time around 1964 and '65 were the number of students who attended the Kalamazoo Street School affected in any way? A. Yes, sir.

Q. In what way? A. Again the I-496 corridor was taking out homes of youngsters attending this school as well as the State of Michigan having an expansion program to the west of the Capitol taking out homes with the idea that a new Capitol as well as additional State office buildings were to be built.

Q. And did a time come when consideration was given to closing Kalamazoo School? A. Yes, sir.

Q. And do you recall whether or not the Committee had any recommendations to make with regard to Kalamazoo Street School and its continued use? A. Yes, sir.

Q. I hand you Plaintiffs' Exhibit 5 and call your attention to Page 23. Does that set forth the recommendations? A. Yes, sir.

Q. And what were the recommendations with regard to Kalamazoo **[520]** Street School? A. That this facility be phased out as a K-6 facility at the earliest date possible with no major expenditures to be made on the physical plant, and that the students in the present attendance area be bussed to outlying schools which serve predominately white attendance areas.

Q. And did a time come when the Board of Education did phase out Kalamazoo Street School as an elementary school? A. Yes, sir.

Q. And I hand you Defendants' Exhibit 31 and ask you to state what that is. A. It is phasing out of the Kalamazoo and Michigan Avenue Schools.

Q. Who made the resolution? A. Mrs. Canady.

Q. And who supported it? A. Mr. Ebersole.

Q. That is you? A. That is me.

Q. Now would you read that resolution, please?

The Court: What page.

The Witness: Page 7, sir.

The Court: All right.

A. "It was moved by Mrs. Canady, supported by Mr. Ebersole, that the scheduled plan for the phasing out of the **[521]** Kalamazoo Elementary School by June 30, 1970, and the Michigan Avenue Elementary School by June 30, 1971, as outlined in the position paper entitled 'Final Plans for Eliminating DeFacto Segregation in Elementary Schools,' unquote, dated September 22, 1969, be adopted; that special plans be developed for future use of the Michigan Avenue School as an elementary center for enrichment and have the Kalamazoo School as a center for continuing education including program descriptions,

space allocation, and cost estimates of any necessary renovation; and that fixed geographic boundaries be established assigning pupils in these two attendance areas to specific receiving schools."

Q. Now was that motion put to a vote? A. Yes, sir.

Q. And did it carry? A. It carried unanimously.

Q. And was Kalamazoo Street School phased out as an elementary school? A. Yes, sir.

Q. And what happened to the students who remained in that attendance area? A. They were bussed, as the resolution suggests, to predominantly white schools.

Q. Did Mrs. Canady ever vote to discriminate against any **[522]** group, that you know of? A. No, sir.

Q. Now, Mr. Ebersole, inviting your attention again to Plaintiffs' Exhibit 5, Page 25——

The Court: Plaintiffs' Exhibit 5, that is a report.

Mr. Newman: Citizens' Committee.

The Court: All right.

By Mr. Newman:

Q. At the bottom of the page do you find any entry concerning the Committee's reaction to the closing of Lincoln School? A. Yes, sir.

Q. And what does it say? A. "The Citizens Advisory Committee is in accord with the action taken by the Superintendent and the Board of Education in closing Lincoln School as an elementary school and commends their positive approach to——"

The Court: Is this on Page 1?

Mr. Newman: 25, your Honor.

The Court: I have got Page 6.

The Witness: At the bottom.

The Court: That is——

Mr. Newman: Page 25.

The Court: 25?

Mr. Newman: Yes, sir.

[523] The Witness: That is titled "Lincoln Elementary School."

The Court: Yes. All right.

A. The bottom paragraph: "And commends their positive approach to a difficult problem."

Mr. Newman: Your Honor, pages 26 and 27. Twenty-six is headed "Main Street School."

The Court: Yes.

By Mr. Newman:

Q. Did the Committee make any recommendations with regard to Main Street School and bussing of students? A. Yes, sir.

Q. What recommendation was made? A. "That the enrollment be reduced and that overflow enrollment be continued to be transported to other schools."

Q. And did their Committee also consider Michigan Avenue School? A. Yes, sir.

Q. Did it make any recommendations? A. Yes, sir.

Q. Did it make any recommendations relative to what should be done with Michigan Avenue School? A. Yes, sir.

Q. What were they? A. That this building be phased out as a K-6 facility as **[524]** soon as possible with no major expenditures made on the physical plant.

Q. Did it make any discussions or recommendations as to assignments of students? A. Yes, sir.

Q. What? A. That the students in the present attendance area be bussed to outlying schools which serve predominantly white attendance areas.

Q. Now will you state to the Court whether any influences have operated to affect the Board with regard to Michigan Avenue School over which the Board had no control? A. Yes, sir, there have been two. I stated one, and that was the expansion of the State of Michigan in acquiring land for future growth in their office and Capitol Complex. And the second was a Logan-Butler artery traffic pattern, which has been on the drawing board for approximately 15 years with the State Highway Department. This means that Logan would be one-way going either north or south with Butler Boulevard then becoming one-way going in the opposite direction. This affected the thinking along Michigan Avenue School lines quite a bit.

Q. Why? A. For the simple reason within this Logan-Butler Complex, the School itself would be left on an Island, per se, **[525]** with youngsters crossing two main highways; and, secondly, the lack of students to attend this school.

Q. Now, has the State of Michigan ever indicated to you whether or not—so indicated to the Board of Education whether its program of converting these two streets into boulevards has been abandoned? A. No, they have not.

Q. Has the State of—or, I will withdraw that. What has happened to Michigan Avenue School as far as the State of Michigan? A. The State has purchased the building.

Q. And when did that take place, if you recall? A. Approximately two years ago.

Q. And since the State has taken or has purchased this building, do you know if any additional land became available to the School District to use in connection with Michigan Avenue? A. Only that land which we have purchased in this area.

Q. And where was that? A. This was to the south and west of the Michigan Avenue School, approximately two to three blocks.

Q. Do you know whether or not the State of Michigan has abandoned its contemplated project of expanding the Capitol Complex to the west? A. I do not.

[526] Q. Do you know whether in fact the State of Michigan has developed other areas for Government—for State Government buildings? A. Yes, sir.

Q. And where are they located? A. They are in the southwest part of the community known as Windsor Township.

Q. Has there been any expansion of business in the area that has affected decisions as to the elementary schools in their so-called "River Island Area"? A. Yes, sir.

Q. What? A. Primarily the expansion of the Oldsmobile plant.

Q. And are you familiar with the industry known as Industrial Welding? A. Yes, sir.

Q. Has any other activity taken place that has affected schools in the so-called "River Island Area"? A. There is another factor that has entered into it, and that was the expansion of the Lansing Community College.

Q. And how did that effect elementary schools in that area? A. By removing homes in their expansion program.

Q. And reducing the—— A. Reducing the student population.

Q. Have there been any other schools phased out in this **[527]** area besides Kalamazoo and Lincoln? A. Yes, sir.

Q. What were they? A. There has been the Townsend Street School.

Q. Now why was that phased out? A. The lack of student population and the expansion of the downtown area.

The Court: We will take a recess at this time. 1:30.

(At 12:10 p.m. the noon recess was taken.)

AFTERNOON SESSION, MONDAY, OCTOBER 20, 1975, 1:40 P.M.

The Court: All right. You may proceed.

By Mr. Newman:

Q. Mr. Ebersole, do you recall when you were on the Board in 1957 when a time came when some white people from the Main Street attendance area requested the Board of Education to take some action with regard to transferring students? A. Yes.

Q. Now, would you step down, and with reference to this map, would you point out to the Court where the so-called "Heatherwood Area" is located in the Lansing School District? **[528]** A. Right in here.

Q. In Main Street. You may return to the stand.

At that time how was the population distributed in the Main Street attendance area? A. Well, it was predominantly black.

Q. Where did the blacks tend to live and where did the whites tend to live geographically? A. The whites tended to live in the Heatherwood area as I pointed out. The blacks lived to the south of that and to the east.

Now, what did the whites want the Board of Education to do with regard to the matter of some change to be made in Main Street attendance area? A. They wished the boundary lines could be changed so that more whites could be brought into the Main Street area.

Q. I am talking about whites now. A. Oh, excuse me. I don't know.

Mr. Newman: May I ask a leading question, your Honor?

The Court: Yes, you may.

Q. Was there a time when some of the white residents of the Main Street attendance area wanted a portion of Main Street detached from the Main Street attendance area, or do you recall that? **[529]** A. Yes.

Q. All right. What did they want the Board of Education to do? A. To attach to that another elementary attendance area.

Q. And did the Board of Education grant that request? A. They did not.

Q. Then subsequently did some of the black parents come to the Board of Education with a request with regard to Main Street School attendance area? A. Yes, they did.

Q. And do you recall what the representatives of the Black community in that area desired? A. They also desired a change of boundaries in which Blacks could be transferred to another school.

Q. And was that request granted? A. It was not.

Q. Now, why were both of these requests refused? A. For the simple reason that again—at that time the philosophy of the Board was this was a neighborhood school and that the youngsters would do as well or better within their own neighborhood school concept than picking them up and transferring them to another district.

The Court: Just a moment. In the Main Street School in the Heathers Addition—

The Witness: Heatherwood.

[530] The Court: Heatherwood.

The Witness: Yes, sir.

The Court: Heatherwood was predominately white and the Main Street was predominately black?

The Witness: That's right.

Mr. Newman: Excuse me, your Honor——

The Court: Now could you change the boundaries in any way which would dilute the composition of each school?

The Witness: Not and do what the folks requested.

The Court: Well, that isn't the question. The question is could it be done?

The Witness: At that time?

The Court: Yes.

The Witness: No.

The Court: Why not?

The Witness: Because of the distance that the youngsters would have to walk to get to school.

The Court: Is that the only reason?

The Witness: Well, that was a predominate reason, yes.

The Court: What was the distance?

The Witness: That I wouldn't know. I'd have to go back and measure it.

[531] The Court: Was it a mile?

The Witness: Oh, yes, at least a mile.

The Court: A mile and a half?

The Witness: Yes, yes, sir.

The Court: Not all children would have to walk a mile and a half?

The Witness: No, not all of them.

The Court: If they're adjoining, those closer to the dividing line would have to walk less distance probably than those who were more remote from the line?

The Witness: Not in the composition of the neighborhood. We have a senior high school that sits between the two—sets between the two schools, and they would have to be walking around the senior high, either way.

The Court: Well, how big an area does the senior high take?

The Witness: Twenty-five acres.

The Court: All right.

By Mr. Newman:

Q. Mr. Ebersole, with reference to Plaintiffs' Exhibit 57, do you observe the Main Street attendance area, the Verlinden attendance area and the Michigan Avenue attendance areas? **[532]** A. I do.

Q. Would you step down and point out to the Court where those three areas are? A. Main, Michigan, Verlinden?

Q. Now, will you point on that map where the Heatherwood attendance—or, where the whites living in Main Street area? A. In here.

The Court: And that's what?

The Witness: Beg your pardon?

The Court: And that's what?

The Witness: That's the Heatherwood area in the Main Street.

The Court: You see, when we put it on the record, we have to have it identified.

The Witness: I am sorry.

The Court: The "here" wouldn't be intelligible to the reviewing Court.

By Mr. Newman:

Q. The Court is asking whether that is north, south, east, or west so that the record will reflect. Now with regard to Main Street attendance area, what part is the so-called "Heatherwood" that was predominately white at that time? A. That is in the northern part of the Main Street attendance area.

[533] Q. And then what is the school service area of Michigan? A. Michigan is a corridor-type running east and west between Verlinden and Main.

Q. Now, where in the Michigan attendance area is Sexton High School located? A. Sexton High is in the western part of the Michigan attendance area.

Q. Now if the whites had been detached from Main and attached to Verlinden, what would have happened to Michigan Avenue? A. Well, if any boundary changes were to be made in here, all three schools would have had to be taken into consideration.

Q. But assuming the boundary lines were simply changed at the north end of Main and the corridor of Michigan was chopped off so that you had lines running from Verlinden extending down to Main, what racial composition would be picked up if that were done? A. White.

Q. Now, at that time—this is 1957. A. Yes, sir.

Q. What was the racial makeup of Michigan Avenue? A. That was white.

Q. And if, on the other hand, assuming that the lines had been extended north from Main up to Verlinden, again would you have to cut off the Sexton area? **[534]** A. You are presuming to take the northern boundary of Michigan?

Q. Yes. No, the northern boundary of Main and extend it north. A. To the northern boundary of Michigan?

Q. Well, up into the Verlinden area. A. Again, you would wind up with predominately whites.

Q. All right.

The Court: That would be the consequence of that?

The Witness: Yes, sir. But remember you have Sexton High School in here, of which you have no population at all, and the northern boundary of Michigan borders right on Sexton High School, so you would pick up very, very few whites, if you were to move this boundary up here.

The Court: Well, if the request of the Blacks at Main was to include more people in the Heather——

The Witness: Heatherwood.

The Court: ——wood Addition——

The Witness: Yes, sir.

The Court: ——your denial of that request maintained then a predominantly black school and a predominantly white school?

The Witness: Yes, sir.

[535] The Court: That was a consequence of that decision?

The Witness: Yes, sir.

The Court: All right.

By Mr. Newman:

Q. Well, I think you misspoke, Mr. Ebersole. Heatherwood is in Main, Main attendance area.

The Court: Well, the white—then what area of it did the blacks request that you include in the Main Street School?

The Witness: They didn't request any special area. They wanted us to take this whole area in here and redraw boundaries

so that the mix was changed around. We had the Administration study it, and they could come to no satisfactory conclusion that the boundary lines could be changed so a satisfactory decision could be made so the youngsters that were black could get to either Verlinden and/or Michigan so the racial mix would be better.

Q. At that time was anyone suggesting that students should be bussed? A. No, sir.

Q. Now with regard to the two buildings, the school building at Main and the school building at Verlinden, are these buildings described in any particular descriptive phrase **[536]** that indicates anything as to their similarity? A. They're identical twins.

Q. And were both of these—were additions added to both of these buildings? A. Yes, sir.

Q. And were both of these buildings modernized? A. Yes, sir.

Q. Do you favor a neighborhood school? A. Yes, sir.

Q. Why? A. This gives the youngster the best opportunity of having not only the association of the school, but the association of the parents and the parent working with the school for the best educational possibility for the youngster.

Mr. Newman: You may cross-examine.

Cross-Examination of Vernon D. Ebersole

By Mr. Davis:

Q. Mr. Ebersole, I understand you have been ill lately, is that correct? A. Yes, sir.

Q. Mr. cross-examination may take a while, and I would like it, if it goes on and you would like water or something, to let me know, because I do—— A. I have a signal with the gentleman, I will raise my hand.

[537] The Court: And if you want to quit anytime, just let us know.

The Witness: I know. I am okay.

Q. Going back to 1957, I am going to hand you Plaintiffs' Exhibits 68 through 71. I am going to give the Judge a copy.

Mr. Davis: These are the Court copies, your Honor, just so you can follow us.

Q. You indicated that a group of black parents came to you and asked that the boundary line be changed from Main Street School to go north and include some whites, is that correct? A. Yes, sir.

Q. And I believe you indicated that the reason that could not be done was distance, is that correct? A. Yes, sir.

Q. Now, in looking at the map before us, can you indicate or tell me whether I am correct: To take the Main boundary line and to move it up adjacent to the Verlinden boundary line, it's two blocks? A. Yes, sir.

Q. So you would have to move the boundary line an additional two blocks to include white students in the Main attendance area? A. That's right.

[538] Q. And it was your feeling at that time that to move the attendance area two blocks, that children had to travel an unreasonable long distance? A. Yes, sir.

Q. Isn't it true that from the western edge of Michigan, Michigan Avenue attendance area, that their closest school would have been Main or Verlinden as opposed to Michigan, looking at your map? A. No, I don't agree.

Q. Then it is your—and we can draw our own conclusions from the map—but it is your testimony that the area farthest west of the Michigan attendance area is closer to Michigan than it is to Verlinden or Main? A. Mr. Davis, let's put the record straight. The farthest attendance area encompasses this

Sexton High School plot, and there are no youngsters or houses within that area.

Q. Well—— A. So that the first street would be—and I think it is McPhearson (to the Court) here, we are talking about this. You have got it upside down for me.

Here it is. Right here. This is Main, this is Michigan, this is Michigan area here. There is nothing in here. This would be the first street that would have any houses on, and then on the east side of the street only, so that even the youngsters here would have farther **[539]** to go to Michigan than here—or, to Main rather than they would to Michigan. Now, do you want me to spell that out for the record?

The Court: Were you getting that?

The Reporter: I was taking it down, Judge.

The Court: You did take it down?

The Reporter: Yes.

The Court: All right.

The Witness: Is that clear enough?

The Court: Yes.

By Mr. Davis:

Q. In 1957 a committee was appointed to investigate, among other things, the boundary lines between Main and Verlinden and Michigan, were they not? A. Yes, sir.

Q. And you were on the Board when this Committee was appointed? A. Yes, sir.

Q. And this Committee studied the situation and came back with recommendations, did they not? A. Yes, sir.

Q. And did this Committee, after its study and evaluation in 1957, come back and recommend that in fact the Main

Street School boundary line should be changed? A. I don't recall.

Q. Let me refresh your recollection, sir.

[540] The Court: What report is that?

Mr. Davis: This is contained in your pretrial statement, the minutes of March 28, 1957.

The Witness: Here.

The Court: Counsel, the Exhibit number of that?

Mr. Davis: That is the pretrial statement, our agreed stipulations of fact. I am referring to these minutes.

Q. Can you indicate your conditions by reading the second and third—well, read the first three paragraphs of that, to refresh your recollection. Could you read it out loud, please. A. Surely. "It was moved by Rosa, seconded by Ebersole that the following resolution concerning the Main Street School area be adopted:

"Whereas, the number of Negro children attending the Main Street Elementary School has been increasing materially in recent years until at the opening of school in September of '56 the school was slightly overcrowded and the enrollment consisted of 62 Negroes——"

Q. That is percent, isn't it, sir? A. "62 percent, which overcrowding was soon eliminated and the percentage of Negroes reduced to 55 percent by adjustments to school boundaries, and

[541] "Whereas, the Board of Education considered that the trend of an increasing ratio of Negro to white enrollment at the Michigan Street School could develop into complete segregation, a situation not conducive to satisfactory race relations, and

"Whereas, after the Board had unsuccessfully sought a means of reversing the trend towards a segregated Main Street

School, it appointed a committee in response to a request by parents from the area to analyze the conditions and recommend corrective measures."

Shall I go ahead?

Q. Yes, I want you to read the first recommendation because you indicated you weren't clear. A. "Whereas, the Committee recommended that the Board of Education, number one, adjust further the school boundaries to reduce the Negro-to-White ratio."

Q. Thank you. Then the Committee you appointed in 1957 did in fact recommend the boundaries be changed? A. According to the record I just read, the answer is yes.

Q. Well, do you recall that the record indicates that you seconded that resolution? A. Yes, sir, it is on the record.

Q. Now, did you in fact follow their recommendation? A. No.

Q. And the reason was distance? **[542]** A. I would like to refresh my memory as I did.

Q. I refer you to the second page of that resolution, and to the third paragraph. A. "Whereas, after thorough study of the recommendations, the Board of Education has concluded that the first recommendations cannot accomplish any material results unless some children travel unreasonably long distances."

Q. Thank you. Then do you now recall that the reason the boundaries were not changed was because of distances? A. That's what the record says, sir.

Q. Now I am going to ask you to look at the map before you and look at the southern boundary line of Verlinden and the area immediately north of that. A. Yes, sir.

Q. Now that area was white, was it not? A. Yes, sir.

Mr. Davis: Does the Court see the area I am referring to?

The Court: Verlinden?

Mr. Davis: The southern portion of Verlinden.

The Court: Down here?

Mr. Davis: This area right here.

The Court: Which is Michigan?

Mr. Davis: No, in the Verlinden area.

[543] The Court: I mean Michigan Avenue?

Mr. Davis: Right. Between Michigan and Ottowa.

Q. And you indicate that area was white? A. Yes, sir.

Q. Let me ask you this, Mr. Ebersole: Isn't it a fact upon pressure from the community you in fact took that area, which was white, from the Michigan attendance zone and made it a part of Verlinden? A. I don't recall.

Mr. Davis: For the Court's benefit, I refer to Answers to Interrogatories, Answer to Interrogatory number 1B. It is on the Answers to Interrogatories. This is a separate document.

The Court: Is that it?

Mr. Davis: No, it is a thick document. It is Answers to Interrogatories.

(Discussion was had off the record at the bench.)

Mr. Davis: I am referring to this answer there.

The Court: I will read it. "The area between the City limits on the west and Jenison Avenue on the east and between Michigan Avenue on the south and Ottowa Street extended from the City limits on the north **[544]** shall be removed from the Michigan Avenue School area and added to the Verlinden School area." All right.

By Mr. Davis:

Q. Again I ask you, Mr. Ebersole, isn't it a fact in 1957 you took an area that was composed of white children, took it from Michigan Avenue and put it into Verlinden? A. If that is the record, the answer is yes.

The Court: I read that for the purpose of relieving this witness of the burden of reading it.

The Witness: Thank you.

Q. And I believe you testified, Mr. Ebersole, that you were in favor of the neighborhood concept, school concept? A. Yes, sir.

Q. And that your feeling in rejecting the various proposals to change school boundary lines was in part premised upon that belief, that children should attend their closest school? A. Yes, sir.

Q. Well, did you not in fact second the motion to phase out Kalamazoo Street School? A. Yes, sir.

Q. Did you realize at that time for that entire attendance area those children would not be able to attend their neighborhood school? A. Yes, sir.

[545] The Court: Was a consequence of that action by the Board transferring Michigan—portions of Michigan to Verlinden, that those students transferred by the change of the boundary would be going to a school other than its neighborhood school?

The Witness: No, sir.

The Court: All right. What was the consequence of it?

The Witness: The real consequence was to relieve the overcrowding of Michigan Avenue at the time. That was the reason for the transfer.

By Mr. Davis:

Q. Mr. Ebersole, did you realize as a member of the Board that the transfer policy existing within the District was being used by white students to leave predominantly black schools and to go to predominantly white schools? A. The policy you are talking about is what?

Q. Using the special transfers to leave Main Street School, Michigan Street School, and to go to Verlinden, did you recognize that? A. Yes, I do. A physician's statement, you are speaking about?

Q. Yes. But did you recognize the fact that that was being misused by those children? A. No, sir.

Q. Well, let me ask you this: Do you recall receiving a **[546]** report from the Committee on school needs in 1961? A. No, I don't remember, but we probably did.

Q. Do you recall that in 1961 a report condemned the practice of the misuse of these special transfers? A. Yes, sir.

Q. Do you recall in 1964 a report of the Human Relations—a report to the Human Relations Committee that again condemned this practice? A. I wouldn't deny it.

Q. Do you recall the 1966 Citizens' Advisory Committee again condemning that practice? A. Yes, sir.

Q. Directing your attention to the placement of mobile units at Main Street School, you recall that? A. Yes, sir.

Q. And the reason was that that school was overcrowded? A. Yes, sir.

Q. Was consideration given at that time in light of the overcrowding, the changing of boundaries? A. No, sir.

Q. No studies or anything were made to see that that would work? A. No, I didn't say that. Studies were made, and the other schools had as many youngsters as they could take care of at that time.

[547] Q. Would that have been true with Verlinden Street School? A. Yes, sir.

Q. Can you indicate or explain to me why those years between 1962 and '65 Verlinden was overcrowded that the School District permitted these transfers in numbers of 25 to 30 of non-resident people into Verlinden, if it was overcrowded?

Mr. Newman: Your Honor, I would have to object that this is a misstatement. The figure would reflect the non-residents in Verlinden does not reflect a transfer of 25 to 30 a year or any other figure.

Mr. Davis: Your Honor, I will refer to Plaintiff's Exhibit 21, a report to the Human Relations Committee, which does not talk about non-residents but talks about transfers. I refer to Page—I believe it is on 154.

The Court: Is this the Human Relations Committee Report?

The Witness: That's correct.

Mr. Davis: That's correct.

The Court: 154?

Mr. Davis: Yes, Page 154.

The Court: All right.

By Mr. Davis:

Q. The chart on this Exhibit being page 154, Plaintiff's **[548]** Exhibit 21, shows, does it not, that there were 25 transfers into Verlinden in '62-63, and 35 transfers into Verlinden in '63-64, does it not?

The Court: I can't see—do I have the right one?

(Discussion was had at the bench between Mr. Davis and the Court out of the Reporter's hearing and off the record.)

The Court: All right.

Q. It reflects in '62-63 25 transferred in, and in '63-64 33 transferred in, correct? A. Yes, sir.

Q. Again then I ask you, do you have an explanation why if Verlinden was overcrowded such a high number of transfers were permitted into that school? A. I don't recall that I said Verlinden was overcrowded. What I said was that Verlinden has enough students. There is a difference between having enough students and overcrowding, and bringing these folks in did not overcrowd the school, per se, during either of those two years.

Q. But there was not enough additional room for any change of boundaries, is that correct? A. That's right, any significant, change, yes, sir.

The Court: If I haven't requested it, I would like, and I think it is important that I do have, **[549]** a list of every change of boundary, at least from 1948 to the present time, in the School District, including the annexations. All right.

Mr. Davis: I would indicate to the Court that one of our interrogatories asked for all school boundaries, and contained in the Answers to Interrogatories are all the school boundary changes that the Board has indicated to the Plaintiffs.

The Court: Is this from 1948?

Mr. Davis: If I can find my interrogatory, I can——

Mr. Newman: I think actually you requested boundary line changes to certain schools, and we furnished that information.

The Court: It is necessary that I have all boundary line changes, particularly within that range of time.

Mr. Newman: Well, and I assume it is in order that we prepare them?

The Court: Yes.

Mr. Newman: I would like to state this, your Honor: I don't believe the pleadings made any issue of boundary lines. The only information that we were requested to furnish on boundary lines are in the areas where the minority schools are located, and we have **[550]** furnished that.

The Court: Mr. Newman, the Court has to have that information in this case, and I direct the School Board to furnish it to the Court.

Mr. Newman: Your Honor, I am not being disrespectful.

The Court: Yes, I know you are not, but I just want to make sure that the order is understood.

Mr. Newman: All right. Now, your Honor, I have to give you the unfortunate fact that the Board of Education will not be able to provide very complete information, because when boundary line changes are made, sometimes apparently this was done, in all case I would guess it was done, without any record being made as to what the boundary line was prior to the change. All you have is the new boundary line, and in some cases we have not been able to find, particularly, you know, this is true with reference to the information Mr. Davis asked, we did not find the original boundary lines for the school attendance areas about which he inquired. We gleaned from the minutes the changes that were recorded, but in some cases there was no record available or discoverable as to what the boundary lines were before.

Now as to what brought this about, I don't know. I assume there was a period of time when they **[551]** simply weren't keeping records, I don't know.

The Court: Boundary line changes are an ingredient or is an ingredient which is considered as a major factor in cases of this kind.

Mr. Newman: Well, again, I just want the record to show that we have some practical problems. We are not trying to

evade or avoid. Good heavens, we spent probably, I don't know, a hundred hours going through the minutes searching for the information Mr. Davis asked for.

The Court: I know it is a heavy burden preparing for and trying these cases, and I am well aware of it.

Mr. Newman: Your Honor, I am not complaining. I am just explaining what has happened, and I don't want anyone to think we didn't search and didn't look.

The Court: I acknowledge that that is what you are doing.

Mr. Newman: I guess I am complaining, but I am not being obnoxious.

The Court: I recognize both.

By Mr. Davis:

Q. In that same vain, Mr. Ebersole, well, let me ask you: Was there a time that Main Street School was immediately **[552]** adjacent to Verlinden? A. You mean the boundary lines?

Q. Yes. A. I don't recall.

Q. Do you know what the boundary lines for Main Street School were prior to 1956? A. No, sir.

Q. Mr. Ebersole, you have testified about the composition of the Citizens' Committee in 1966. A. Yes, sir.

Q. And you pointed out who a number of those members were. Let me ask you this: Did you have confidence in that Committee? A. Yes, sir.

Q. Did you think they would do a fine and thorough job? A. Yes, sir.

Q. When they recommended an end—when they recommended boundary line changes, was there any particular reason why you did not accept that part of their proposal? A. Mr.

Davis, as I recall, I believe our resolution that we just read from a few minutes ago outlined the reason why.

Q. All right. That was in 1957. I am now referring to 1966; would the reason have been the same? A. No, I don't recall.

[553] Q. Now I don't want to be argumentative at all. A. Neither do I.

Q. I understand in '57 you couldn't change the boundary lines because of distance? A. Right.

Q. But '67 you took an action that would send all of the children from Kalamazoo for a much longer distance, bussing them out; I wonder if you can reconcile those two views? A. I think so. In '57 the issue of bussing hadn't even entered into the picture as far as the Lansing School System was concerned. The only busses we had at that time was the one school bus that we had inherited with the Everett Elementary School.

Q. By 1967 you had busses and your philosophy was different about—— A. Yes, sir.

Q. Transporting them by bus then? A. Yes, sir.

Q. All right. Then from '67 up until '72 you voted against bussing children, did you not? A. Yes, sir.

Q. And can you reconcile those two views, how in '67 it was all right to bus, at least the blacks out, but in '72 it was again not all right? **[554]** A. Perhaps I made a mistake in '67.

Q. Well, did you take any act to end this one-way bussing after you had found you had made a mistake? A. As an individual?

Q. As a Board member. A. No.

Q. Do you recall the Board member that served with you in 1971? A. Yes.

Q. In your opinion, were they good Board members? A. Yes.

Q. Again directing your attention to mobile units, Defendants' Exhibit 16 concerning mobile unit locations indicates that in 1972 and '73 mobile units were placed at Verlinden, is that what you recall? A. Yes.

Q. Isn't it a fact—was the reason that Verlinden was becoming overcrowded? A. Yes.

Q. Isn't it a fact in '72-73 when Verlinden was becoming overcrowded, that Main Street School was showing a lot of vacancies, was uncrowded? A. Not that I recall, no.

Q. I now refer to the Ethnic Count report for 1972, for 1973, the fourth Friday count, I can give you an Exhibit **[555]** Number on that.

Mr. Newman: What Exhibit Number?

Mr. Davis: Part of the year '72-73.

Okay. That would be Exhibits 63 and 72.

Q. And ask you, Mr. Ebersole, if you will indicate the number of students at Main for those two years? A. '72, 283. '73, 232.

Q. All right. The enrollment was decreasing, was it not? A. Yes.

Q. And it was far under capacity, was it not? A. Yes.

Q. Then the question again that I asked you, at the time that you put mobile units at Verlinden because it was overcrowded, was during the same period of time that Main was showing a lot of vacancies? A. Well, Mr. Davis, there is more that goes into it than just spaces for youngsters.

Q. I know, but my question to you is, at the time you put mobile units there—— A. The answer is yes.

Q. ——there was space available in Main? A. The answer is yes.

The Court: He said the answer is yes.

Mr. Davis: Thank you.

Q. Directing your attention to the October 9th, 1975 Board **[556]** of Education meeting, can you indicate to the Court how you voted on the Administration's proposed plan? A. You will have to fill me in a little more than that, Mr. Davis.

Q. Do you recall the time when Dr. Candoli presented a plan to the Board of Education calling for an addition to Cluster II, plus the additions to Clusters IV and V? A. Oh, yes.

Q. Can you indicate how you voted at that time? A. I voted no.

Q. Can you indicate to the Court why? A. Yes. I was opposed to going along on the full program as Dr. Candoli outlined it, because of the fact that Clusters IV and V had not been presented to the community or the communities which would be involved in this, and I feel very strongly that they should have the opportunity of discussing and knowing just what is involved in forming these two new Clusters.

Q. Would it be your position then that the Board should not take any action in this regard unless the community says it is okay? A. No.

Q. Would the attitudes of the community affect your decision as to whether or not you supported or didn't support it? A. No.

[557] Q. Then if the attitudes of the community would not make a difference in your decision, why then postpone it until the community tells you what their attitudes are? A. Well, let's reverse that. I didn't say what the attitudes of the community were. I said so you could have the opportunity of having the community know what is involved in the Cluster Program so that they could be educated into what is involved and how they would enter into the whole picture.

Q. Do you have an opinion as to whether or not we should add Clusters IV and V? A. Yes.

Q. What is that opinion? A. No.

Q. And are there any other reasons for your opinion other than the community has not had an opportunity to know? A. I think I have expressed that, that I think we should have the neighborhood school concept.

Q. What would be your view, Mr. Ebersole, as to who should fill this new facility, who should attend it? A. Well, Mr. Davis, since we are under an injunction from the Court not to build the building, I think this is an irrelevant question at this time.

The Court: It is relevant at this time. It would assist the Court in making a judgment **[558]** that it has to make in the case.

Q. Do you recall the question?

The Court: You were not enjoined from testifying. You were just enjoined from continuing with construction. So there is no injunction by this Court limiting your testimony.

The Witness: By the same token, you enjoined us to present a plan to you for the operation of this school.

The Court: The Court has to make a ruling before that school operates.

The Witness: Right.

The Court: And it has to know what your intentions are, what your plans for that school are. The Court is concerned about no plan at all.

The Witness: Which we didn't have.

The Court: And the building underway making way.

The Witness: Right.

The Court: With the intervening time between the last session and this Court and the convening of the present session of the Court, the time in which the Court was of the opinion that you would be working on plans, which the Court could evaluate, so your—the question which counsel has asked may be asked, and **[559]** I request you to answer it.

The Witness: All right. I am ready.

The Court: Thank you.

Q. Do you recall the question? A. Would you want to re-state it again, sir?

Q. Certainly. In your mind who would attend the Vivian Riddle School? A. My basic thought is the youngsters in the neighborhood.

Q. And would that include the children from the Lincoln and the Kalamazoo Street area? A. Yes, sir.

Q. And you believe this with the recognition that if your plan went through or your hopes went through, that this school would be overwhelmingly black? A. Yes, sir.

Q. And you supported the site location and the plan for this school with that in mind? A. Yes, sir.

Mr. Davis: I have no further questions.

Redirect Examination of Vernon D. Ebersole

By Mr. Newman:

Q. Mr. Ebersole, with regard to the matter of bussing black children from Lansing School District, were you present at the meeting when the first bussing program was installed from Main to Walnut? **[560]** A. I don't think I was.

Q. And with regard to the second program at Lincoln Street, or, Lincoln School, how did you vote on phasing out Lincoln

and transferring students by bus out of that attendance area? A. I voted yes.

Q. You voted what? On Lincoln, I am talking about. A. On Lincoln, no, I voted no.

Q. Now in 1969 when the vote was with regard to Kalamazoo, why did you vote then at that time, in favor of bussing the children out from that attendance area? A. The school was losing their population over a period of time for the reasons I gave, the State Complex, the I-496 Complex, to the point where it was getting uneconomical to operate it with the number of youngsters that would be attending. The situation worked out at Lincoln apparently had been satisfactory, and this was the best solution for this situation at that time.

Q. Now you were asked questions about use of special transfers. Was the use of the so-called medical transfer solely for the benefit of whites? A. No, sir.

Q. Was it available without restriction to anybody in the School District? A. Yes, sir.

[561] Q. Do you know whether or not blacks as well as whites used this program? A. They did.

Q. Now are you acquainted with Stuart Dunnings, Jr.? A. Yes, sir.

Q. Is he black or white? A. He is black.

Q. Is he the attorney for the Lansing School District? A. He is.

Q. Do you know whether or not he actually presented medical certificates for the transfer of some of his children? A. He did.

Q. And if anyone else presented such a statement from a doctor, regardless of whether the person presenting it was black or white or brown, would you feel it should be given consideration? A. Yes, sir.

Q. Now you were asked apparently spaces becoming available in Main Street for 1972 and '73, and it was—you indicated it appeared to be that there were spaces becoming available. Do you recall any structural changes made at Main Street that affected the number of class rooms that were there, by either increasing or decreasing them? A. No, I don't.

[562] Q. If the number of classrooms had been reduced, then this figure as to the number of pupils that could be accommodated would also be reduced, would it not? A. Yes, sir.

Q. You don't recall whether that happened? A. No.

Q. Mr. Ebersole, I will inquire whether you recall if when Mr. Hubbell and his associates conducted the survey in 1973, if residents in the area of Main, Kalamazoo, Lincoln, and Michigan were asked what they thought—what use they thought should be made of the School that was to be built on the west side of Lansing? A. Yes, I recall.

Q. And do you recall what the response of the largest single number was?

Mr. Davis: Your Honor, at this point I am going to object. I think the question calls for him to answer questions that more appropriately would be asked of Mr. Hubbell. I point out that his report is in evidence, and it seems as he is asking the witness what Hubbell said. I object strenuously.

The Court: Do you have the Hubbell reports?

Mr. Newman: Yes, I do, your Honor.

The Court: I am talking to the Clerk **[563]** of the Court.

Mr. Newman: Well, your Honor, it is Defendants' Exhibit 20.

The Witness: No, it is the one prior to that.

Mr. Newman: No, no. It is the 1973, Defendants' Exhibit 20.

The Court: I have the Exhibit, counsel.

Mr. Newman: Sir?

The Court: I have the Exhibit now.

By Mr. Newman:

Q. I invite your attention to question number 12. Will you read the question, please? A. "In about two years a new school will be built on the west side to replace the Michigan Avenue School. Who do you think should go there?"

Q. And what was the first choice? A. "Neighborhood area school children."

Q. And does this Exhibit also reflect the average among all of the school areas, as well as there is an average, and then the figures for each individual school area, attendance area? A. Yes.

Q. And what do they show? A. The average is 49 percent. Main, 42 percent. Michigan **[564]** Avenue, 52 percent. Kalamazoo, 53 percent. Lincoln, 83 percent.

Mr. Newman: That is all I have.

Mr. Davis: Just one question, your Honor.

Recross-Examination of Vernon D. Ebersole

By Mr. Davis:

Q. You were asked concerning what had happened to the capacity of Main Street School, whether it had been reduced, et cetera. Do you recall that?

Mr. Davis: I refer the Court to Plaintiff's Exhibit 36, which is a 1971 Facility Planning Study.

Q. And just ask you to indicate to the Court what the capacity was of Main in 1971? A. 330.

Mr. Davis: All right. Thank you. I have no further questions.

Mr. Newman: I have no further questions of Mr. Ebersole, your Honor.

The Court: You may stand down. Thank you very much, Mr. Ebersole.

(Witness excused.)

* * * * * * *

EXCERPTS FROM TESTIMONY OF RAY HANNULA

[320] called as a witness by the Defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newman:

Q. Will you state your name in full? A. Ray Albert Hannula.

* * * * * * *

Q. How long have you lived in Lansing? A. All of my life.

* * * * * * *

Q. Are you a married man? A. Yes.

Q. Have you had any children? A. Yes.

[321] Q. How many? A. Three.

Q. And what schools have they attended in Lansing School District? A. I have had a daughter attend Grand River Avenue School, an elementary school; Wainright, Dwight Rich, and Harry Hill; a son attended Wainright, Dwight Rich, and is currently in Harry Hill. The daughter is graduated from Harry Hill.

I have another son who is in special education who has attended a variety of schools in the District.

* * * * * * * *

Q. Now are you also connected with Lansing School District? A. Yes, I am.

Q. In what capacity? A. As a member of the Board of Education.

Q. And how long have you been a member of the Board of Education? A. Since July of 1971.

Q. And were you elected or appointed? **[322]** A. Elected.

Q. Have you held any office? A. Yes.

Q. What office? A. That of Secretary, and I am currently serving as Vice President.

Q. Now did a time come when the Board of Education of Lansing School District considered a program to change the racial composition of some of the elementary schools? A. Yes.

Q. And when did that take place? A. This was approximately two and a-half to three years ago, as I recall, shortly after I got on the Board.

Q. And did a time come when a plan was devised and the Board of Education voted on it, a so-called "Cluster Plan"? A. Yes.

Q. Do you remember what that was? A. Again, that was approximately two to two and a-half years ago.

Q. And were you present at the time the Board voted upon the adoption or the rejection of the Cluster Plan? A. I was not.

Q. And where were you when the vote was taken? A. I was attending a convention in New York City, and the **[323]** meeting was a specially called meeting, June 29th.

Q. In connection with your employment or what? A. Yes, in connection with my employment.

Q. And a special meeting was called June 29, 1972? A. Yes.

Q. By the Board of Education? A. Yes.

Q. Now, had you made your position with regard to the Cluster Plan known to the other members of the Board of Education? A. Yes.

Q. What was your position? A. I was opposed to it.

Q. And why were you opposed to it? A. Basically I felt that I represented the voters of the Lansing School District, and it was my opinion that 80 percent of them were opposed to this. I did try to encourage my fellow members to, rather than adopt it immediately, take a year, and if in fact this was the thing, the type of thing we should do, to attempt to convince the public, who I felt was unalterably opposed to it, that this was the way we should go, sell the idea.

Q. Were you concerned about any phase of the plan or the operation of the plan as far as transportation of students was concerned? **[324]** A. Yes. I guess I believe in neighborhood schools. I live in my present address for approximately fourteen years, and the prime reason for moving there was to get closer to an elementary school when my children started attending. I mentioned that the daughter had attended Grand River Avenue School for a short time. I think it was approximately one month. We were situated on the street 918 Maryland, some eleven blocks from that school, and my wife and I didn't want her to walk. So we did move. We moved across town away from basically the area that both of us had grown up in where our family and friends were, and moved completely across town to a new area just to get close to an elementary school, and we are currently one and a half blocks from Wainwright School.

Q. And how long ago was it you moved? A. Oh, it is approximately fourteen years.

Q. Now will you state whether or not you have any minority neighbors in the area in which you reside? A. Yes, I do. I have a black man that lives the first house south of me, a black family directly across the street. I would—and it is a guess—I would guess it would be—Churchill Downs area is at least 10 percent minority.

Q. Now, in arriving at the opinion you did about the adoption of the Cluster Plan, were you motivated by **[325]** racial considerations? A. No.

Q. Were there any considerations other than what you thought the people of the community's reaction would be, plus your feeling about bussing? A. I suspect there was some consideration of cost. It would seem to me that the monies that we were planning to—had proposed to be spent for bussing, lunches, et cetera, might better be spent for additional staff, aides, et cetera, within the existing neighborhood schools.

Q. And do you know approximately what the additional cost for the operation of these Clusters? A. I understand it is slightly over $100,000 per year continuing cost for the existing Clusters, $150,000, somewhere in that neighborhood.

Q. Now, did a time come when there was a recall election? A. Yes.

Q. And was a new Board elected? A. Yes.

Q. And did a time come when the Cluster Program resolution was reconsidered by the new Board—or, I will withdraw that. How many new members were elected to the Board? A. Five.

Q. And do you recall what the vote was about the adoption **[326]** of the Cluster Plan to begin with? A. It was five to three.

Q. Five in favor and three against? A. Three against, yes.

Q. And after the recall election, were the five that voted in favor of the Plan replaced? A. Yes.

Q. And did the Board subsequently rescind the Cluster Resolution? A. Yes.

Q. How did you vote on that? A. I voted for rescission.

Q. And will you state whether or not this was consistent with your position before the resolution was originally adopted? A. It was.

Q. Were you racially motivated in the vote you cast? A. I was not.

Mr. Newman: You may cross-examine.

Cross-Examination of Ray Hannula

By Mr. Davis:

Q. Mr. Hannula, how long have you been on the Board of Education? A. Approximately four years.

Q. Were you on the Board at a time in 1970 when the **[327]** Citizens' Advisory Committee made their report to the Board? A. Relative to desegregation of the elementary schools?

Q. Yes. A. Yes.

Q. And were you aware of the—or, did they make you aware of the analysis and investigation they had done prior to submitting this report? A. Yes.

Q. And were you aware they had been studying this for a period of approximately a year? A. Yes.

Q. Were you aware they had all of the census figures, the school enrollment figures, the projection figures at their disposal? A. Yes.

Q. And they came back, did they not, and made three alternative proposals? A. Yes.

Q. And each one of these three alternative proposals involved much more wide-scale bussing than the one finally adopted, isn't that correct? A. That's true.

Q. One of their proposals would have involved all of the elementary schools in the Lansing School District, is **[328]** that true? A. That's my recollection.

Q. Another one would involve approximately 25 of the elementary schools? A. I think it was approximately half, which would be 25.

Q. And instead the Board of Education adopted, did they not, a much less expensive plan? A. That's true.

Q. I believe you stated on direct examination that your suggestion was that—or, you were telling the other Board members they ought to wait another year, is that correct? A. Yes.

Q. And what was the purpose of this extra year you wanted to wait? A. Well, we had a number of public hearings on the three plans that were suggested by the ad hoc committee, and we were getting quite a bit of input from the community at those hearings, and we were getting—I am sure individually I was—getting input from friends, foes, et cetera. My impression was that 75 to 80 percent of the community were violently opposed to this plan.

Q. And that was your reason for opposing it, was it not, was public pressure? A. Well, I wouldn't—yes, I guess you could call it that. I didn't feel it as a pressure. I felt it as a respon- **[329]** sibility to the voters who elected me.

Q. All right. But it was not any flaw or problem you found with the plan? A. I wasn't sure of the educational benefits that would be derived from the plan, and I was also aware of the pressure from the public for the bussing of the lower elementary students or younger ones.

Q. K through 2? A. Yes, and K through 6, if you will.

Q. Were you concerned that the Cluster Plan may have an adverse effect upon the achievement of students involved? A.

No, but I didn't necessarily believe it would have a positive effect, either.

Q. Were you concerned that bussing would have a negative effect on achievement level? A. No.

Q. So your main concern then was simply the public didn't want it? A. That, plus the question in my mind as to the educational benefits of it, and the cost.

Q. Did you have any other fears or concerns when you voted to rescind the Cluster Plan that I haven't asked you about? A. No.

Q. We have covered them—public opinion, cost, and whether **[330]** or not there was any benefit to it, would that be a fair statement? A. Yes.

Mr. Newman: I think he included bussing.

The Court: Pardon?

Mr. Newman: I believe that Mr. Hannula said his concern about bussing was another reason. I am sure that was inadvertently overlooked. But when a summary is asked, I think everything should be included.

Mr. Davis: Well, let me——

The Court: Well, Mr. Newman, let's get things straight now; you have an opportunity to rehabilitate your client, or your witness, on redirect, and instead of—if he omits something, you can furnish the omission without interfering with the cross-examination.

Mr. Newman: Your Honor, I apologize. I intended to state an objection. That would embrace my objection, that he had given four things, not just three. I agree that I didn't follow the proper procedure. I am sorry. I will observe it the next time and state an objection rather than an observation.

The Court: Fine. Thank you.

By Mr. Davis:

Q. Did you have a concern about bussing itself? **[331]** A. Yes, I think that is the concern that I felt that the public had, basically.

Q. I am talking about your concerns. Did you have a concern as a Board member about bussing? A. Yes.

Q. And what was this concern? A. The concern was that I feel that people move into an area, and basically one of the prime reasons they move where they are is to locate next to elementary schools, which is why I moved, and I felt that a person who is selecting a home in a particular area to be next to a school ought not be subjected to having his child bussed away from that school that he purposely located next to.

Q. Is that concern that you have equally applicable to black families as to white? A. Yes.

Q. And can I ask you where was this concern when your Board bussed blacks from Lincoln up to Kendon? A. Well, in this instance I wasn't on the Board at the time that was done. I believe that the Lincoln School was demolished, torn down to make room for Oldsmobile's expansion, and the children were bussed out of that attendance area to an available school. I personally may have chosen a closer school.

Q. Well, where was this concern when the Board bussed the **[332]** blacks from Kalamazoo to eight or ten outlying districts? A. Again the same thing is true. It was a decision reached before I was on the Board.

Q. Well, what about the bussing of a certain portion of the Main Street students out? That School remained open, did it not? A. Yes, and that was in effect at the time I was elected to the Board.

Q. Well, did you personally make any move to rescind any of these plans? A. No.

Q. Why? A. Well, at the time I came on the Board the whole question of the desegregation of the elementary schools was under consideration. I felt that the policies and practices that were in effect were those that should be kept until we could reach some type of decision regarding these.

Q. Well, at the time of the rescission weren't we talking about a plan that was in effect? A. We were talking about the Cluster Plan, not the other portion of the bussing.

Q. But in 1973 when you voted for rescission, the bussing for the Cluster Plan was already in operation, was it not? A. That's true.

[333] Q. Just as the bussing in the Main Street attendance area to the outlying districts was in effect? A. I am not sure that under the Cluster Plan students from Main Street bussed other than to Cluster Schools.

Q. Well, let me ask you this: Do you know what the effect, or did you know what the effect of the rescission would be when you voted to rescind that plan? A. In my estimation, it would have eliminated the clusters and left the bussing of Kalamazoo Street attendance area children and perhaps Main Street and whatever else was involved back to what it had been before the imposition of the clusters.

Q. In other words, and correct me if I am wrong, it would have stopped the bussing of white children, but the bussing of black children would have continued? A. That's true, I would think.

Q. And you knew the effect of that rescission would be to send black children, who were then attending desegregated schools, back to segregated schools? A. No, those that are bussed out of Kalamazoo are going to predominantly majority student schools.

Q. Well, talking about the children from Main that under the Cluster Plan were bussed to desegregated schools, you knew

the effect of that rescission would be to send those children back to segregated Main Street School? **[334]** A. Yes.

Q. The same is true of that effect in terms of both black children and Michigan Avenue School? A. Yes.

Q. You knew the rescission would be taking them out of desegregated schools and sending them back to Michigan? A. Yes.

Q. I assume the rest of the Board knew of this effect? A. I am sure they did.

Q. Were you present at a Board of Education meeting October 9th when the new Cluster Plan was presented? A. I was.

Q. And were you informed by the staff or the administration that there were certain schools within a district not involved in the cluster that were becoming segregated? A. Yes.

Q. Were you informed that a plan had been devised to eliminate this? A. Yes.

Q. And was that plan explained to you? A. It was.

Q. Did that explanation contain facts and figures in terms of projected enrollment under the plan? A. Yes, I believe it did.

Q. And were you told that as to Cluster Two, the only **[335]** effective way to desegregate that facility was to add two more schools to it? A. Per this plan, yes.

Q. And can you tell the Court after that explanation what your vote was? A. I was opposed to it.

Q. Why? A. Because again it was an expansion of the Cluster Plan that was in existence that we are forced to continue by an injunction, and I still feel that the community is opposed to this Cluster bussing.

Q. Then is it your position that you will be opposed to any desegregation plan as long as it is your feeling that the community doesn't want it? A. No. It would depend on what was involved. I can bluesky a number of types of things that perhaps would accomplish desegregation in the community. Quite frankly, I don't know how we would go about it. I think if there were a way that the School Board would encourage open housing, integrated neighborhoods, I would support it 100 percent. I think this is the natural way for people to live together, and to select the portion of town they wish to live in and the school that their children should attend.

Q. And that's the only sort of proposal that you will go along with, one that encourages open housing, et cetera? **[336]** A. No, I didn't say that. I said I could imagine that as one possible solution.

Q. Do any other solutions come to mind, other than suggesting that the residential patterns be changed? A. Not at this point in time.

Q. Well, do you believe changing of school district boundary lines would help? A. Yes.

Q. Do you have school district boundary line changes in mind? A. None have been recommended by the Administration, but perhaps that might be another way.

Q. Well, do you think if I showed you a school district map you could indicate some boundary lines that may have an effect? A. No, because I am not 100 percent assured of the distribution of the minority-majority people in a particular school attendance area, but perhaps gerrymandering could be done for integration.

Q. I see. So while you voted no on the Cluster II, you did not have any alternatives in mind? A. No, I did not.

Q. And the proposal was made, was it not, to add Clusters 4 and 5? A. Yes.

Q. And you voted no on that? **[337]** A. Yes.

Q. I assume for the same reason? A. Yes.

Q. The public didn't want it? A. Yes.

Mr. Davis: No further questions.

Mr. Newman: I have no further questions.

The Court: Did you ever take into consideration any of the Constitutional obligations placed upon you as a Board member by the Constitution of the State of Michigan?

The Witness: Yes.

The Court: Did you read that section of the Constitution of the State of Michigan on discrimination?

The Witness: No, I don't think I have.

The Court: You have never read them?

The Witness: But I am aware of the contents.

The Court: So in your calculation of what you do, you didn't take into consideration the Constitutional provisions of the Fourteenth Amendment and the Constitutional provisions of the State of Michigan?

The Witness: I feel that I have. I feel **[338]** that this School District has never acted consciously to deprive any body of people their Constitutional rights, their equal rights. I strongly favor integrated schools. I live in an integrated neighborhood myself. I think it is good. I think it is good for the children, I think it is good for the adults. I do feel that I was elected to office to represent the public as well as uphold the Constitution of the State of Michigan. I think I have done that.

The Court: All right.

Mr. Davis: Nothing further.

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EXCERPTS FROM TESTIMONY OF

[233] NED S. HUBBELL,

called as a witness by the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newman:

Q. Mr. Hubbell, will you please state your name? A. Ned S. Hubbell.

Q. And where do you live? A. In Port Huron, Michigan, 1004 Hollis Street.

[234] Q. What is your age, sir? A. 46.

Q. And what is your educational background? A. I have a Bachelor's Degree from Northwestern University, and a Master's Degree from Wayne State University, and some additional graduate work at some three other universities.

Q. And are you engaged in a business or occupation? A. I have my own consulting firm for the past 8 years, a professional firm that specializes largely in educational school-community relations and opinion research.

Q. And have you conducted surveys in connection with your work? A. Yes. Particularly an increased number in the last two or three school years. This school year alone, the one just completed, we have conducted opinion polls for nine school district opinion polls in this year. About 25 school districts, I believe, in the last two and a half to three years.

Q. Have you conducted any opinion polls for the Lansing School District? A. We conducted initially in the spring an opinion poll **[235]** conducted on behalf of the Lansing Schools, utilizing voluntary interviewers, and more recently, conducted a specific opinion poll of a part of the Lansing School area, as recently as the first week of July.

* * * * * * *

Q. Now, what was the request that was made to you relative to the conducting of this survey? A. We were asked if we could systematically poll the opinions of school parents in an area of the School District that comprised four attendance areas, elementary **[236]** school attendance areas. I believe just two schools were operative in those areas. They were the Main School area, Michigan School area, Kalamazoo and Lincoln School area.

[246] We asked them who did they think should attend the new Michigan Avenue School when it was built and completed on the west side. Nearly half of them, 49 percent said that it should be neighborhood area children. About one-fourth, 29 percent, suggested the new school be an integrated school. Another 16 percent said it should be open to all students.

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[255] Q. And by ethnic group, 67 percent of the whites thought it should be a neighborhood area school? A. Yes, sir, that is correct.

Q. 49 percent of the blacks thought it should be a neighborhood area school? A. That is correct.

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Testimony at Trial

[185] A. Our firm was retained by the Lansing School District in **[186]** September of 1974 to conduct one part of an evaluation that they were undertaking later that year of the Cluster Plan. The Board instructed us to—as part of that evaluation, to conduct an opinion research project designed to seek opinions from those directly affected by the Cluster Plan.

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[198] The major drawback of the Cluster Plan, according to Lansing elementary teachers and support staff members, is that

it takes children away from their neighborhood schools through busing.

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[199] About one-fourth of the present and former Cluster parents felt the plan had had—has had a negative effect on their children. But as the next transparency shows, the majority of present Cluster parents and nearly half of those who did have children in the Cluster schools last year feel the plan has had no effect on their youngster.

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EXCERPTS FROM TESTIMONY OF
[295] JOHN LEWIS, JR.,

called as a witness by the Defendants, being first duly sworn testified as follows:

Direct Examination

By Mr. Newman:

Q. Will you please state your name in full? A. John Lewis, Jr.

Q. And did you receive a subpoena that required your presence in court today? A. I did.

Q. And are you here in response to that subpoena, are you not? A. I am.

Q. Where do you live, Mr. Lewis? A. 1520 West Lenawee, Lansing, Michigan.

Q. And what is your age? A. 41.

Q. Are you a married man? A. I am.

Q. And did you have any children? A. Yes.

[296] Q. How many? A. Four.

Q. And have they attended the Lansing School System schools? A. They have.

Q. And did you attend a college or a university? A. I did.

Q. And what was that? A. Michigan State University.

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Q. Where are you employed, Mr. Lewis? A. Oldsmobile.

Q. And what is the nature of your employment? A. I am in the Labor Relations Department. I am a representative.

Q. And did your children attend any elementary school in the Lansing School District?

The Court: You say—pardon me. You say you are a representative. Are you a representative **[297]** of the Oldsmobile people or a representative of the Union?

The Witness: I am on the Labor Relations staff at Oldsmobile representing Oldsmobile management.

The Court: All right. Thank you.

Q. Did your children attend elementary school in Lansing? A. They did.

Q. And what school did they attend? A. Main Street.

Q. And was there a time when there was a principal at—well, I will withdraw that. For the record, because the Reporter just takes down words, would you state whether you are black or white? A. Black.

Q. And while your children were in elementary school, were you acquainted with any principal at that school? A. Yes, I was.

Q. And how many principals did you know there? A. Two

Q. And who were they? A. Mr. Hayes and Mr. Keyes.

Q. Now have you been a member of any parent-teacher's association? A. Yes.

Q. What parent-teachers' association? **[298]** A. Main Street PTA and several other PTA units at some of the other schools.

Q. And do you know about how long Mr. Hayes served as a principal at Main Street School? A. Not exactly. I would imagine that's going back quite a ways. I would say somewhere in the neighborhood of maybe eight to ten years, I think.

Q. Now did you hold any office in the Main Street Parent-Teachers' Association? A. I was President of the Main Street PTA.

Q. Were you acquainted with a gentleman by the name of Stuart A. Nolan? A. Yes.

Q. Did he hold any office in the Main Street Parent-Teachers' Association? A. I believe he was either Father Vice—he was the Vice President.

Q. Now did a time come in the year 1966 when you and Mr. Noland on behalf of the Main Street Parent-Teachers' Association wrote a letter to Dr. Manning concerning J. E. Hayes? A. Yes.

Q. And would you state for the record whether Stuart Nolan was black or white? A. He was black.

[299] Q. And would you state for the record whether J. E. Hayes was black or white? A. He was white.

Q. Now what was the reason you wrote to Doctor—or, I will withdraw that. Do you recall what Mr. Manning's position was in Lansing School District? A. I believe he was the Superintendent.

Q. And do you recall the reason for having written to Dr. Manning on behalf of the Main Street Parent-Teachers' Association? A. I think so. I think that was at a time that Mr. Hayes, we were about to lose our principal, who we thought very highly of, and we did as a PTA send a letter to the Board of

Education recommending that he be considered for an administrative post.

Q. And did you indicate to the Administration how you regarded the way in which Mr. Hayes performed his duties at Main Street School? A. Yes. As a matter of fact, I believe we did.

Q. And do you recall how you made that indication or what you said, in substance? A. Well, if I am permitted to say, we were all very fond of Mr. Hayes, and we were pleased with the job that he had done working in conjunction with the PTA at Main Street School.

[300] Q. And what kind of school was operated there as far as you were concerned with regard to making—learning possibilities available to your children? A. Let me say, at that time I think that Mr. Hayes, along with his staff, did an excellent job.

Q. And how did you and the PTA members regard the school in comparison to other elementary schools in Lansing School District? A. Well, that was our school, and naturally we felt that there wasn't another school in the City any better.

Q. And do you recall the makeup of the staff there with regard to the number who were black and the number who were white? A. No, I can't honestly sit here and say that I do—can differentiate specifically.

Q. Okay. Were there some black teachers there? A. Yes.

Q. Were there some white teachers there? A. Yes.

Q. And I believe you have already testified that you thought that was a very good staff? A. Yes.

Q. Thank you very much.

Mr. Newman: You may cross-examine.

[301] **Cross-Examination** of John Lewis, Jr.

By Mr. Davis:

Q. Mr. Lewis, you testified a letter was written to representatives of the Board of Education commending a principal, is that correct? A. That is correct.

Q. Did you make any other communications, either written or verbal, to the Board of Education? A. Yes.

Q. Did you ever complain about anything to the Board of Education? A. Let's say I stated my opinions about certain situations that existed in the School System to the Board of Education, yes.

Q. Can you indicate to the Court the nature of some of your complaints? A. The one complaint that I had—and this is just one among many, but this is what I feel was the key complaint, was the fact that our school over there, even in light of the fact of the excellent staff they had there at Main Street School, nevertheless it was a situation whereby—and I am not exact on these percentages, but Main Street School was approximately 80 percent black, and this was disturbing, and this was a topic of discussion throughout my stint at Main Street School with **[302]** the Administration and so forth. Our feelings and my feeling were then, and are now, that an individual, a youngster cannot get quality education in a segregated environment. That is because when he goes out into the world after his school days, he doesn't go out into the world into an all black and/or an all white world, but a mixture of all kinds of races, creeds, colors, and so forth. And if he doesn't have the—if he isn't exposed to this sort of thing while he is experiencing a learning process in school, then his ability to communicate with those other people out there in the world, he is at a loss. That is my personal feelings, and that also was the feelings of the PTA Board.

Q. These were expressed to the Board of Education? A. They were.

Q. Did you actually go down to the Board of Education meetings and express this? A. Oh, yes.

Q. Did you also have occasion to complain to the Board of Education about the one-way bussing? A. Very definitely.

Q. And can you indicate the nature of your complaint about one-way bussing? A. Well, first of all, we felt that our school was an excellent school, both the structure and the staff that **[303]** we had there, and we felt kind of being slapped in the face when it was being talked about taking our kinds out from our school and filtering them in at some of the other schools, but yet still no one out of the other schools were being brought into Main Street, and this highly upset us.

Q. So your feeling was then that if they were going to transport the black children from Main Street School to the outlying schools, that they should also bring children from the outlying schools into Main Street School? A. That is correct.

Q. And these feelings were expressed to the Board of Education? A. They were.

Q. Do you recall whether or not you or your group ever mentioned to the Board by complaint or otherwise anything to do with school boundaries? Do you recall that or not? A. We may have, but to recall it vividly, that I couldn't attest to.

Q. Are you familiar with the term "gerrymandering of boundaries? A. Vaguely, yes.

Q. Is it your feeling then that as President of the PTA something had been done with the boundaries, gerrymandering **[304]** of the boundaries?

Mr. Newman: Well, until the basis is laid to show that anything was done to the boundaries with regard to this school and this witness was aware of anything that was done to the boundaries of this service area, I will object to this question.

The Court: Objection overruled. The question is on cross-examination. It is searching for—it is relevant, too, on the basis of whether he knew if there were any gerrymandering of boundary lines and whether he followed up on it.

By Mr. Davis:

Q. Do you recall any discussion with respect to that? A. We did have some discussion as it related to certain boundary changes, and the effects that those changes might have on the school, but to recall exactly as specifically what our discussions about those boundary changes were, that I could not do at this time because that was quite sometime ago.

Q. Very well.

Mr. Davis: Thank you, Mr. Lewis.

Mr. Newman: Thank you very much.

May the witness be excused, if he desires to?

The Court: I have a question or two.

Mr. Newman: Oh, I am sorry.

[305] The Court: All right. Mr. Lewis, you hesitated when you were asked if there were any black teachers in the schools; do you recall that when you were testifying?

The Witness: Yes.

The Court: May I ask why was the hesitation?

The Witness: Well, my tenure as a PTA President at that time, I believe that was some nine or ten years ago, I had to stop momentarily to think back, and then I remembered that there was some black teachers at that school.

The Court: Do you recall approximately how many?

The Witness: Well, I can only think of one right now, a lady by the name of Ferguson, I believe, at that time.

The Court: Do you have an opinion as to whether a change in boundaries would decrease the segregated condition of the Main School?

A. I think at that time my thinking was that a change in the boundary would not decrease the desegregation at Main Street School. It would not decrease the segregation.

The Court: Decrease the segregated **[306]** condition of the school? The school was a segregated school. It was 80 percent.

The Witness: Yes.

The Court: Well, did you think of any terms of—why were you concerned about boundaries if you didn't think it would make some changes in the segregation of the school, increase the area of desegregation and decrease the area of segregation?

The Witness: Your Honor, I guess I am not quite following——

The Court: Maybe I am not clear.

The Witness: ——what you are saying.

The Court: You said that you were concerned about boundaries, and you did talk—you did communicate with the Board on boundaries. What was your object in communicating with the Board on the boundary issues?

The Witness: Well, I think at that time the concern was that—and here I got to get back, because we were—it was all—it was being geared to, as we saw it, whereby our students would be leaving our school and our area and no one was being brought back in, and even with our students leaving the area and going out and infiltrating the other school in the district there, that in a sense still left our school **[307]** in the same type of situation as it was beforehand. In other words, the boundary changes didn't help our situation.

The Court: Well, when you are—the changes that were apparently were changes in school assignment or student assignment.

The Witness: I believe so.

The Court: And that didn't have anything to do with boundaries. Boundaries are moving lines of the limits of a service area, either contracting them or setting them in different structures so as to increase the number of persons who may not be in the school racial; whites, for example, and decreasing the number of blacks that would be in the school. That is what boundaries, change in boundaries are for, in a large measure.

The Witness: Well, the boundary changes in that sense did decrease the number of blacks in the school, but it did not increase the number of whites in the school.

The Court: Well, did they actually change boundaries when they bussed your students out of—your black students out of your school? The boundaries of the service areas of the school remained the same, didn't they?

[308] The Witness: Sitting here trying to recall, I can't actually say.

The Court: So you don't know whether there were any boundary changes made upon the one-way bussing of black students to white schools?

A. No, I couldn't sit here and testify that on my—I can't remember back to that point.

The Court: So you don't know whether there were any boundary changes made of any kind during that period of time affecting Main Street School?

The Witness: Thinking back, your Honor, I think—of course I can't be absolutely sure, but I think there were some boundary changes made that did directly affect Main Street School, but in

trying to think back exactly what those changes were and so forth——

The Court: You don't know whether it decreased?

The Witness: Right.

The Court: Or increased the segregated condition.
All right.

Mr. Davis: I have several more questions, if the Court please.

Further Cross-Examination of John Lewis, Jr.

[309] By Mr. Davis:

Q. Mr. Lewis, how long have you lived at your current address? A. Approximately eight years.

Q. How long have you lived in Lansing? A. Ever since I got out of college back in 1956.

Q. And where did you live in 1956? A. Over at—on West Street. I believe the address was 911 West Street.

Q. And do you know what school district that would be in, which school attendance area? A. Oh, Main Street.

Q. So you have lived in the Main Street attendance area since 1956? A. (Witness nodding.)

The Court: The answer is yes? He nodded his head. Did you get that, Mr. Reporter?

The Reporter: Yes.

A. I am sorry.

Q. You are familiar with the residents in that area in terms of racial makeup? A. Yes.

Q. Now I direct your attention and I am going to refer to—if I could find the correct Exhibit number—I am **[310]** going to refer to Plaintiffs 68, 69, 70 and I will hand the Court a copy of one so the Court can follow it.

I show you what purports to be school attendance area for what we call the "River Island School," do you see that? A. Yes.

Q. Now in relationship to that map, can you indicate where your residence was in '56? You indicate West Street. Can you find it on the map?

The Court: Would that be about near Main Street School?

The Witness: Yes.

The Court: There is a WES, and then there is a black dot that apparently blocks out the rest of it.

The Witness: Right here. Here is West.

Q. Okay. Now you are pointing almost directly at the location of Main Street School, that circle, and you lived right near the circle on this particular map? A. Yes, just adjacent.

Q. About how far from the school? A. About a half a block.

Q. All right. You lived on the south side of the expressway, which is denoted on this map? **[311]** A. Yes.

Q. Now when you moved, you moved to where, your present address? A. I moved three—two times. From West Street over to Everett Drive, and from Everett Drive over to my present address.

Q. And where is that? A. 1520 West Lenawee, which is right in there.

The Court: Where?

Mr. Davis: Soon as he points it out I will describe it for the map.

The Court: Oh, yes. I see it.

Q. It appears to be near the corner of Jenison and Lenawee just inside about a block from that intersection, Jenison and Lenawee. A. Just about a block.

Q. And a block toward the inner part of Main Street attendance area or towards the west, correct? A. Yes.

Q. All right. Now I am going to ask you to test your recall in terms of persons, the racial composition of particular neighbors as of 1956 as best you can recall, or '57, in those years, and tell me if I am correct: That the area below Michigan Avenue south towards Main Street School District was an area of increasing black population; **[312]** the farther south you went, the higher the density of blacks? A. Yes, that's correct.

Q. Now taking Main—Michigan Avenue and going north, this is 1956 or about, going north from that bottom line of Verlinden or Michigan Avenue, was that an area of increasing white population? A. Yes.

Q. So if the boundary line were to be moved south, the Main Street boundary line were to be moved south, the area which would be cut off or at the top would be black in population, do you understand me? If we take the northern area of Main Street attendance zone, that area would be—and placed it up into Verlinden, that would bring blacks into Verlinden, would it not? A. Yes.

Q. On the other hand, if we take the Verlinden boundary line, the southern boundary line of Verlinden in 1956 and move that up or north, that would—and brought that area into Main, that would bring whites into Main, would it not? A. Yes.

Q. And this would be based on where, according to your recollection, the whites and the blacks live? A. That's correct.

[313] Q. And is it your recollection that the—say the area—I am trying to read the name of the street. It appears to be "Washtenaw." Would you say that that would probably be the area that separated the black population from the white population, or would it be another street?

Let me rephase that for you. Based on your recollection in 1956, where was the dividing line that cut off the black

community from the white community? What street was kind of the center street? In this area? A. Yes, I am thinking maybe Allegan.

Q. Allegan. All right. You are indicating by your recollection Allegan Street was kind of a cut-off point, and that seems to run right through where Sexton High School is. It is black on our map, is that correct? But it is where—is that correct? A. Yes, to the best of my recollection.

The Court: I am trying to locate Allegan.

Mr. Davis: Perhaps I can help you. Allegan is this street right here.

The Court: Oh, yes. Fine. That's west of Washtenaw, then, isn't it, Allegan?

Q. Where is Washtenaw? A. There is Washtenaw.

[314] Q. All right. That is north—let me ask you rather than state it, which direction is that from Washtenaw, Allegan? A. That is north.

Q. Let me ask you this with reference to the map in front of you just to get an idea; if you were to move the northern boundary line of Main Street School up five blocks, north five blocks—can you picture where I am describing? A. Yes.

Q. Would you have included within Main Street School District in 1956 or thereabout a number of white children? A. Yes.

Q. I am going to ask you about one further area, Mr. Lewis. Can I ask you if you can find this area on your map: City limits on the west, Jenison Avenue on the east.

The Court: Where is City limits?

Mr. Davis: That would be the solid black line, your Honor. Clare is indicated on your map. It is this line.

Q. Do you see Jenison? A. Yes.

Q. Michigan on the south? A. Yes.

Q. And Ottowa Street extended to the City limits on the [315] north. Ottowa is this area here.

Okay. Now do you see that area that I am referring to? A. Yes.

Q. Think back now, 1956, '57. Isn't it a fact that that area was white? A. Yes.

Mr. Davis: Thank you. I have no further questions.

For the purpose of the record, I was referring to the interrogatories for that description, answer to interrogatory number 1, answer B-2.

Redirect Examination of John Lewis, Jr.

By Mr. Newman:

Q. Mr. Lewis, with regard to Plaintiffs' Exhibit Number 70, I will ask you if this Exhibit shows on it the freeway? A. If these dotted lines here represent the freeway, this freeway would be going right through where the dotted lines are.

Q. Was that freeway in existence in 1956? A. No.

Q. Do you recall when the freeway was opened? A. Not exactly.

Q. Has it been as much as five years ago, or less? A. Approximately five years ago, I think.

[316] Q. Now I am pointing to the northwest corner of the main area—or, Main service area. Do you see what I am pointing at? A. Yes.

Q. Do you know the name of that area with regard to a subdivision or anything of that nature? A. Isn't it the Heatherwood Subdivision?

Q. Right. Now will you tell the Court whether or not at the pr sent time there are white people living in the Heatherwood

area of the Main service or Main School service area? A. Yes, there are.

Q. And there were white people living there as long ago as 1956, is that not true, in the Heatherwood area? A. Yes, there were some there.

Q. And you have been asked questions to test your memory as to the nature of the racial composition of the people living in that area. May I ask you if you would agree the census figures are probably a little more accurate than your memory? A. I wouldn't take on the census figures to form my opinion, and that is exactly what I told you.

Q. You gave to the best of your recollection? A. That's correct.

Q. But as far as accuracy, would it not be true that the [317] census figures are more accurate than your recollection?

The Court: Well, that is a judgment we can make.

Mr. Newman: Well, your Honor, he was asked his opinion by Mr. Davis.

The Court: Yes.

Mr. Newman: And I really don't believe that an opinion was appropriate.

Mr. Davis: May it please the Court, your Honor, the Court is well aware, as Mr. Newman, the census figures come out every ten years. The question was directed to an interval between two censuses. In that regard his recollection may be appropriate as census figures.

The Court: All right.

Mr. Newman: I don't think an opinion where something is a matter of statistics is appropriate at all, and I would like the record to reflect that observation, your Honor.

The Court: Well, it so reflects. But here is a man who is in top management of Oldsmobile and is living in the area for some eight years. He has a knowledge of the area that is above and beyond statistics as far as the overall view of the area, and is qualified to express an opinion.

[318] By Mr. Newman:

Q. Mr. Lewis, I invite your attention to the fact that on Plaintiffs' Exhibit 20 there is an indication of another schoolhouse, Michigan, do you see that? A. Yes.

Q. Do you observe the attendance lines for the elementary service area, Michigan? A. Yes.

Q. And to the west end of that attendance area, do you observe a corridor that is unoccupied? A. Yes.

Q. Do you know what is located in that corridor? A. Sexton High School should be somewhere in that area.

Q. Sexton High School actually is a part of the Michigan Elementary School attendance area, is it not? A. Yes, it would be.

Q. At the present time do you know approximately how many white persons live in the Heatherwood subdivision area of the Main Street School attendance area? A. A few, but to fix a number to it, that I couldn't do.

Q. Do you know how many were living there in 19—in that northwest area in 1960? I am talking about the Heatherwood Subdivision area, which is the northwest part of Main Street School attendance area? A. Once again, I couldn't have fixed a figure to it, but **[319]** there were some living in that area.

Q. Were there more in 1960 than there are in 1975? A. More?

Q. White people living in the northwest part of the Main Street School attendance area, were there more white people

living in that part than there are in 1975? A. Yes, I would say there were more living in there than there are now.

Q. When you first established your home in the Main Street attendance area, do you know how many people were then living—how many white people were then living in the Main Street School attendance area? A. Then again, it is a number thing. I couldn't tell you that.

Mr. Newman: That is all the questions I have, your Honor.

Thank you Mr. Lewis.

The Court: Thank you, Mr. Lewis.

The Witness: Thank you.

The Court: You may be excused.

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EXCERPTS FROM TESTIMONY OF
[684] JOHN D. MARRS,

called as a witness by the Defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newman:

Q. Will you please state your name? A. John D. Marrs.

Q. What is your place of employment? A. Lansing School District, Lansing, Michigan.

Q. How long have you been an employee of Lansing School District? A. Going on 27 years.

Q. And what positions have you held with Lansing School **[685]** District? A. First I was a teacher at J. W. Sexton High

School, and since that time, since 1956, Director of Information Services.

Q. During the time that you have been employed by Lansing School District, have you been aware of the fact that certain elementary schools have been closed out? A. Yes, sir.

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[686] Q. Now were you familiar with an elementary school called "Christiancy School"? A. Yes.

Q. And what happened to Christiancy School? A. In the early and mid '60's, both, there was extensive study of elementary buildings by Citizens Advisory Committees and staff.

The Court: What date was that?

The Witness: In the early 1960's and again in the mid 1960's. Christiancy School was one of a very few left that was essentially frame construction. Again, it was serving an area sitting next to industrial development of the John Bean Company and Diamond Reo. **[687]** It was a question of a major expenditure to renovate that facility. The decision was made not to do that. It was a small student population that could be absorbed at Mount Hope, Maplewood, and Moores Park Schools, and consequently it was closed and the property was sold to John Bean, the corporation.

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EXCERPTS FROM TESTIMONY OF
[383] HAROLD A. MOORE,

called as a witness by the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newman:

Q. Will you state your name in full? A. Harold A. Moore.

Q. Where do you live, Mr. Moore? A. 314 West Randolph Street, Lansing, Michigan.

Q. How old are you? A. 52.

Q. What is your business at the present time? **[384]** A. I am a real estate broker.

Q. And at one time—I will withdraw that. Are you married? A. I am.

Q. Do you have any children? A. I have two.

Q. At one time did you serve on the Board of Education of Lansing School District? A. I did.

Q. And when was that? A. I believe it was from 1959 to 1965.

The Court: 1959?

The Witness: I think it was 1959 to 1965.

Q. Now during the past year have you concerned yourself with any group of handicapped children? A. I didn't hear the question.

Q. Have you concerned yourself in the past year with any group of handicapped children? A. I most certainly have.

Q. And what group of handicapped children have you concerned yourself with? A. The mentally retarded, basically.

Q. Now have you helped initiate programs for the benefit of these children? A. I have.

[385] Q. And have your efforts culminated in the establishment of certain buildings or institutions where they can be aided? A. They have.

Q. What are they? A. Well, at first we built the Woodhaven Center for Retarded Children, which was supervised by an agency known as the Greater Lansing Association for Retarded Children. Later on, through the efforts of the Lansing Board

of Education and many others, and efforts on my part, I was able to introduce all the resolutions to purchase the land and construct the Marvin E. Beekman Center for Retarded Children in the Lansing area. And recently we have completed the Moore Living Centers for 35 mentally retarded children in the City of Lansing located on Edmore Boulevard.

Q. Now during the years that you served as a member of the Board of Education of Lansing School District, you were confronted with a number of problems, were you not? A. Many problems.

Q. And as the years have gone by, I suppose, may I ask you if you fully remember all of the problems with which you have had to deal when you were a member of the Board of Education? A. I do not. They were too numerous.

[386] Q. May I inquire as to your efforts on behalf of mentally retarded children as to whether you ever participated in any kind of discriminatory action against any minority group? A. None whatsoever.

Q. Now, with regard to your activities on the Board of Education, did you ever participate in any discriminatory action against any minority group? A. Never to my knowledge.

Q. And do you recall some of the Board members with whom you served? A. Teresa Darling, Vernon Ebersole, Steven Krass (spelled phonetically), Clarence Rosa, Nellie Nussdorfer, Richard Herman, Thomas Walsh.

Q. Are you acquainted with Thomas Walsh? A. I am.

Q. How close is your acquaintanceship? A. I would say we are close friends.

Q. Are your politics the same? A. No.

Q. Now with regard to the Board members whom you have named, do you recall any of those Board members ever having expressed any discriminatory attitudes toward any minority

group in Lansing School District? A. Never during any time with my association with this fine **[387]** group of people have I ever heard any one of them mention anything discriminatory against any minority group.

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EXCERPTS FROM TESTIMONY OF KATHLEEN PENNONI

[618] **Cross-Examination** of Kathleen Pennoni

By Mr. Newman:

Q. Mrs. Pennoni, I take it that you are in accord with the proposition that the public should be involved in school programs? A. Yes, sir.

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Q. Well, the fact is that the overwhelming majority of the people were opposed to bussing, were they not, before the Cluster Plan was adopted? A. Yes, sir.

* * * * * * *

Q. And you are also aware that in July of 1973 when the question was put to the citizens in Main, Michigan, Kalamazoo, and Lincoln attendance areas, the question was put to them, "In about two years a new school will be built on the west side to replace the Michigan Avenue School. Who do you think should go there?" The first choice was "neighborhood area school children," by, on the average of those four areas, 49 percent; are you aware of that? A. Yes, sir, I heard it here in court.

Q. And the next figure was integrated, 29 percent; and the next was open school to all, 16 percent. A. I take your word for the figures. I have never seen that survey. That was a

survey done. I didn't know about it until I heard about it here in court. Not this time, but the last time in court.

Q. This is the survey, and the question I read to you appears here, and the response, and the percentage, all, Main, **[621]** Michigan, Kalamazoo, Lincoln; right? A. Yes, those are the figures you quoted.

Q. So this, the people who lived in the black area also longed for a neighborhood school, did they not? A. I am aware that they want a school in their area.

Mr. Newman: That is all, thank you.

Mr. Davis: Nothing further.

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EXCERPTS FROM TESTIMONY OF DR. EDWARD L. REMICK

Q. Now with regard to the Vivian Riddle School—by the way, how did Vivian Riddle School get the name "Vivian Riddle"? A. It was named after a teacher who has—who is deceased at that particular time, a teacher at Everett High School, an outstanding teacher. Also the family was quite a well-known family in the west side area; for that fact, the City of Lansing, the Riddle family. The name "Vivian Riddle," of course, is after the teacher.

Q. And Vivian Riddle was a black teacher? A. Yes.

Q. Now in connection with the development of the Vivian Riddle School, has the City of Lansing undertaken, committed itself to a development in that area? A. Yes, directly south of the property, which we currently own, which is Washtenaw Street, there is what is known as "Kingsley Place Development" by the City. That extends from Vivian Riddle Court on

the east side to **[86]** Kalamazoo on the south, Huron on the west and Washtenaw on the north.

Our particular area, as we are developing it and acquiring property, would be the Washtenaw, Huron, Allegan, and Vivian Riddle Court.

Now the site development plans would call for contiguous units, so there would be an overlap. We could use part of it as an elementary area, part of the Kingsley play area, part of the park area, and they could also use part of the elementary site area for recreational activities.

Q. And will the school, the Lansing School Board acquire additional land in that area for the school? A. We are in the process of acquiring, well, what is known or was known as Phase I and Phase II; Phase I, the area between Washtenaw and Chelsea, and Phase II is that area between Chelsea and Allegan.

Q. And what is the contemplated use of that space? A. Basically on the west portion, about the west third of the site between Washtenaw and Chelsea will be the building. The area to the east of that, the balance of that particular area will be used as playground area. To the north of the building between Chelsea and Allegan is to be parking area for staff and for visitors, whatever. To the east of that particular area then again **[87]** would be part of the play area.

Q. Now you indicated that originally several years ago when this program was under consideration, that Model Cities was involved, is that correct? A. That's correct.

Q. And what do you mean by "Model Cities"? A. Model Cities, currently known as Community Development Act, but it was the—well, primarily a funded group to the City by the Federal Government under HUD, and also partly under HEW, HUD being Housing and Urban Development Act, HEW being the Health, Education, and Welfare. There were monies allocated to the City of Lansing, and these were programmed for various uses, socioeconomic uses by the City.

Target areas, which would cover part of the east side, the River Island, part of the River Island area, and an area down near Harley Franks' Elementary School—Hill School were included in the Model Cities areas, and funds were appropriated by the policy board of the Model Cities, and then approved by Council and Mayor. Various projects were developed. Of those, one was the Kingsley Place Development.

Q. Now in connection with the initiation of this program and its progress in developing over the years, have citizens been involved? **[88]** A. Very definitely, yes.

Q. And citizens from the West side area? A. Yes.

Q. And specifically black citizens? A. Yes.

Q. Have discussions and meetings taken place with the people who will be affected by this development? A. Yes, sir, there has been.

Q. And have you found that the black citizens who were involved were interested in having a school in that area? A. Yes, they were.

Q. And the City project that will be there with the park and the community building? A. They were also interested in that. In fact, there were specific advisory committees set up for Kingsley Place, and that was one of the requirements of the grant, that there be citizen involvement in the immediate area, and also the—well, the total Model Cities areas as designated.

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EXCERPTS FROM TESTIMONY OF
[59] CLARENCE H. ROSA,

called as a witness by the Defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newman:

Q. Will you please state your name in full? A. Clarence H. Rosa.

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Q. And in the years past, what has your employment been? A. Till five years ago I was Deputy Director for the State Building Division.

Q. For the State of Michigan, of course? A. Yes.

Q. And at the present time you are a widower, are you not? A. I am.

Q. You do have three children who are practically all grown, and two of them are married, are they not? A. That's correct.

[60] Q. And did they all attend the Lansing schools? A. They did.

Q. Now, have you been a member of the Board of Education of Lansing School District? A. I have.

Q. Do you recall when you first became a member? A. 1957.

Q. And how long did you serve? A. Until I was recalled in 1972.

Q. And during that period of some fifteen or sixteen years, did you hold any offices? A. I was President of the Board, I think on three different occasions.

Q. And did you hold other offices, too, from time to time? A. I may have been Vice President. I am not sure.

Q. Now how long have you ben a resident of the City of Lansing, Michigan? A. I am a native of Lansing.

Q. Did you attend school in Lansing? A. I did.

Q. What schools did you attend? A. Moores Park, West Junior, Walter French, Lansing High School, Lansing Central High School.

Q. Was it Lansing High School before it was Lansing Central? A. There was only one high school in Lansing when I entered, **[61]** and it was then called "Lansing High School."

Q. Now during the period of time that you served on the School Board, did you have questions concerning problems of construction, problems concerning overcrowding, problems concerning annexations? A. We did.

Q. And while you were a member of the School Board, did the School Board endeavor to involve citizens who would be affected by decisions of the Board of Education participate in discussion groups or furnishing information or becoming involved before the Board decisions were made? A. We did.

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Q. Were you aware of the area known as the River Island Area while you were in school? A. Yes.

Q. And that has been described generally as an area, the west boundary of which is Clare Street connecting the Grand River as it makes a U-turn through the City of **[62]** Lansing? A. Yes.

Q. Over the years that you have lived in Lansing, have you noticed the population makeup, the ethnic makeup change in that area? A. In the West—in the Island Area?

Q. Yes. A. Yes.

Q. And with regard to that area, are you able to describe some of the uses that are made of the land in that area, starting

with the downtown business district and moving west? A. Well, there is the business area, there is the area where the Government—the complex of Government buildings, Oldsmobile is in there, Industrial Welding, Community College now, the balance of it primarily residential, as I think of it.

* * * * * * * *

[63] Q. Are you able to describe in terms of the type of residence that exist in that area, ranging from a poor type of home to a better type of home?

* * * * * * * *

A. There are some pretty good homes in this area. The publisher of our newspaper, prior to the—Mr. Martin, who published the *State Journal* for a long time, lived in this area, for example. I am trying to think of others. The Vice President of the Michigan National Bank, John Nelligan, I think, used to live in that area. The head of what used to be the Ingham County Hospital—I can't think of his name right now—lived in that area.

Q. Mr. Springer or Dr. Springer? A. Dr. Springer—or, Stringer.

Q. Stringer, right. A. Stringer. I would say it was a good solid area. There are portions of the area in which housing is—at least when I was a youngster, I wouldn't have considered to be poor housing, it was less costly housing, but it was pretty substantial housing. There was a variation **[64]** from less-than-fair, perhaps, to perhaps quite-affluent housing.

Is that the kind of thing you are looking for?

Q. Yes, sir. Now while you were a member of the Board of Education, did a time come early during your term of office, your first term of office when certain individuals came to the Board of Education with regard to Main Street and desired on their part to be detached from Main Street service area? A. Yes.

Q. By the way, before we go on will you state to the Court generally whether or not Lansing School District has followed the establishment and use of a neighborhood school policy? A. I think traditionally they have attempted to do this. I think they have deviated—if I can deviate for just a second, I remember my Dad was very upset when I was a youngster and in about the second grade, and the second grade was moved from Moores Park School clear over to Maplewood, which was then a brand-new building. My Dad was pretty upset because that was a long ways to go. And we had to walk, of course, and eventually it was switched back. But basically I would say Lansing has attempted to have a neighborhood school pattern over the years.

[65] Q. Now going back to the question concerning individuals coming to the Board of Education to request a change in the boundary or some change so that they can—their children could attend a different school, do you recall who the first group were, what was the ethnic or racial makeup? A. Oh, they were white.

Q. And what did these white people desire the Board to do? A. They wanted us to move the boundary that was between Verlinden and Main, move it over closer to Main so that their kids could go to Verlinden instead of Main.

Q. And do you remember about what year that was, approximately? A. I am guessing. '59, perhaps.

Q. Or possibly earlier? A. It might have been '58, I am not sure.

Q. Let me ask you relative to the time that a group of black citizens came to you. Who came to you first, if you recall? A. I guess I can't say. I am not sure who came first. The outcome of the thing was to set up a committee representing people in that area, black and white, and see if they couldn't work out and resolve something in connection with the boundaries between these two buildings. And the committee started out with a lot

of, you know, **[66]** they were hardly speaking to each other when they started out, and the committee worked for a long time, and finally resolved their differences and worked things out pretty well.

Which group came to us first, I am sorry, I am not sure.

Q. Mr. Rosa, I hand you a drawing that has been received in evidence as Plaintiffs' Exhibit 68 and advise you this represents, if you need advice, the River Island, so-called, area. It also reflects attendance areas for the elementary schools, and you can observe the lines for Michigan, Main, Lincoln, Kalamazoo, Genesee, Walnut, Willow, Verlinden, is that correct? A. Right.

Q. Now the problem that you just testified about related to the Main Street School, is that correct? A. That's correct.

Q. And at that time with regard to Main Street, which section of this attendance area was occupied more by white people than by black people, or can you give the distribution by racial makeup? A. No, I couldn't give you the distribution. We are talking about the north edge of the Main Street area, Main Street service area.

Q. Right. But may I ask if the people who were white who **[67]** wanted to be detached, what area did they live in? A. I am not sure of the exact streets, but it would have been——

Q. Without regard to the streets, the general direction? A. It was in this north, the north side of the Main Street area, the side towards the Verlinden building.

Q. So if those white families, if the boundary line had been changed to accommodate the wishes of the white families, that would have meant that Main Street at that time would have become increasingly black? A. No doubt about it.

Q. Mr. Rosa, while you were on the Board of Education, was any boundary line ever changed for the purpose of containing blacks in a given service area? A. I am not aware of any.

Q. Now while you were a member of the Board of Education of Lansing School District, did the Board of Education, to your knowledge, ever undertake to discriminate against any child who was attending school, elementary school on the basis of race? A. Boy, that is an awful big question.

Q. All right. I will back up. A. At any time did we ever on any child——

Q. Let me withdraw the question, Mr. Rosa.

While you were a member of the Board of **[68]** Education, did the Board of Education ever take any discriminatory action against a minority child? A. Well, I don't think that we consciously did. I am not aware of it. I suspect that we may have taken action that others could interpret as being discriminatory, but for the Board to consciously take an action, whose sole purpose was discrimination, I really don't believe we ever did. Somebody else might interpret it that way, but this wasn't certainly our intent.

Q. While you were a member of the Board of Education, did the Board of Education have any policy of excluding from employment classified employees? By that I am talking about the custodians, maintenance people and those people. A. I am not aware of one.

Q. Did the Board of Education ever have a policy of discriminating against minority people as certificated employees? A. I am not aware of any.

Q. Mr. Rosa, before you became a member of the Board of Education, were you visited by some black people who were concerned about what they said—what they believe was a policy, a quota policy of hiring teachers? A. I was.

Q. And did these individuals want to know what your position **[69]** was? A. They did.

Q. And did you tell them? A. I did.

Q. And what was your position? A. I saw no reason for a quota.

Q. Now while you were a member of the Board of Education, was any quota system adopted or enforced? A. None that I was ever aware of.

Q. Mr. Rosa, you were a member of the Board of Education through the period when the Board of Education undertook to achieve a better racial balance in the secondary schools, were you not? A. That is correct.

Q. And by "secondary schools," that would mean the high schools and the junior high schools, would it not? A. That's correct.

Q. And do you recall in 1966 the Board of Education did undertake a program to change the ratio balance at the high schools? A. That's correct.

Q. And do you further recall that a law suit was instituted against the Board of Education? A. Right.

Q. And in the first instance, the Circuit Judges enjoined **[70]** the Board of Education from implementing that plan? A. That's right.

Q. Do you recall if the Board of Education continued that litigation? A. That's correct.

Q. And eventually the Board of Education prevailed in the law suit? A. That's right.

Q. And not that I desire publicly, but the fact is that I was the attorney for the Board of Education? A. You were the attorney for the Board at that time.

Q. That litigation went to the Court of Appeals, and the Supreme Court refused to grant leave for the plaintiffs to appeal to the Supreme Court, is that not true? A. That is correct. It

seems it ran almost a year, but I am not sure, before we finally got an answer.

Q. It took a long time, that's true. But, anyhow, we won eventually? A. Yes, we kept at it and won, right.

Q. Now, did a time come when portable or mobile units were used in Lansing School District at some of these schools? A. That's correct.

Q. And what was the reason for the use of mobile units or portable units? A. To take care of overcrowding that was at that particular **[71]** building, to tide us over. At no time did we ever consider that they would be permanent units, because these would tide over a particular building until such time as either an addition could be put on to that building or a building could be built perhaps in an adjacent area that would pull students out of that area and relieve the crowding.

Q. Was that ever done with the idea of confining anybody to any school area? A. No.

Q. Now, did a time come when Lincoln School was closed? A. Yes.

Q. And Lincoln School was an elementary school? A. Yes.

Q. Before that school was closed, were meetings had with the parents of the students living in that attendance area? A. I presume so, but I don't think—I don't remember attending any. I suspect there were meetings held, but I don't have a first-hand knowledge of them.

Q. A time did come when Lincoln School was closed, is that not correct? A. That's correct, yes.

Q. Mr. Rosa, Defendants' Exhibit Number 30 reflects a copy of the minutes of July 22, 1965. It indicates that you **[72]** were present. I will hand you Defendants' Exhibit—or—yes, it is Defendants' Exhibit Number 30, and invite your attention to the fact that this was a regular meeting. A. Yes.

Q. At that time the members were Douglas Ammons, Kathryn Boucher, Vernon D. Ebersole, Dolly D. Gibson, Nellie Nusdorfer, Clarence Rosa, and Thomas C. Walsh.

Turning to page 5, there appears to be a resolution concerning the closing of Lincoln Street School as an elementary school. A. Yes. Do you want me to read it?

Q. Well, you can read it, yes. You might as well read it. A. "It was moved that the Lincoln School be dismissed as a kindergarten through grade 6 school commencing September 1965, and that pupils presently enrolled be transferred to other schools where space is available; that the Lincoln School be used to house special education pupils, and the Lincoln Community Center continue to use this building and site."

Q. And Thomas C. Walsh made the motion and Mrs. Boucher seconded it? A. Yes.

Q. Did the Board of Education receive from interested parents and interested groups communications from time **[73]** to time concerning the actions of the Board? A. We did.

Q. Sometimes flattering and sometimes otherwise? A. More often otherwise.

Q. On this particular occasion, I call your attention to page 11 that reflects the receipt of a letter from Mrs. Penison Burton, President of the Lincoln School PTA. Does that appear in these minutes? A. Yes.

Q. And this letter is one of the complimentary ones. Would you read that, Mr. Rosa. A. "This letter expresses the belief of Lincoln School parents that transporting their children out of the Lincoln building would be to their benefit." They state, however, that they are pleased with the fine staff and the personal interest taken in their children by everyone at Lincoln. They offer their cooperation in any plan that would give the broadest educational opportunities to their children.

Q. Now did a time come when Kalamazoo Street School was also closed? A. Yes.

Q. And before that school was closed, were there meetings and discussions with future concerned parties? A. Yes, there were on that one, yes, I remember those. If **[74]** I recall correctly, the closing of that building was gradual. It seems we discontinued the third floor first, because it was a hazard, we thought. And then later we closed the entire building.

Q. The building still exists of course? A. It does.

Q. And at the present time it is being used as part of the Administration Center? A. That's correct.

The Court: What floor did you say you closed first, the upper?

The Witness: Yes, the upper floor. I think I am correct on this.

By Mr. Newman:

Q. Mr. Rosa, I hand you what has been received into evidence as Defendants' Exhibit Number 31. I call your attention to the fact that it is a copy of the minutes of the Board of Education regular meeting November 20, 1969. A. Right.

Q. And at that time the members were Richard L. Beers, Kathryn A. Boucher, Hortense G. Canady, Vernon D. Ebersole, Polly Gibson, Clare D. Harrington, Nellie K. Nussdorfer, Clarence H. Rosa, and Thomas C. Walsh? A. Right.

Q. I invite your attention to Page 7 and ask you if this **[75]** reflects the motion with regard to phasing out Kalamazoo and Michigan Avenue Schools? A. Should I read this?

Q. Yes, sir. A. "It was moved by Mrs. Canady and seconded by Mr. Ebersole that the scheduled plan for the phasing-out of the Kalamazoo Elementary School by June 30, 1970, and the Michigan Avenue Elementary School by June 30, 1971, as outlined in the position paper entitled 'Final Plans for Eliminating De Facto Segregation in Elementary Schools,' dated September 22, 1969, be adopted; that specific plans be developed for future use of the Michigan Avenue School as an elementary center for enrichment and of the Kalamazoo School as a center for continuing education, including program descriptions, space allocation, and cost estimates of any necessary renovations; and that fixed geographic boundaries be established assigning pupils in these two attendance areas to specific receiving schools."

Q. With regard to the matter of capital construction or additions of—additions to elementary schools in the River Island Area, did the Board of Education sometimes find it difficult to arrive at a decision because its action depended upon what the State of Michigan might do or what Oldsmobile might desire to do? And I have in **[76]** mind particularly Lincoln School and Michigan Avenue School. A. That correct.

Q. And why did the problem arise? A. Oldsmobile was acquiring property. They were taking our clientele away from us, buying up block after block of houses, tearing them down, so the families were gone.

The State has eminent domain, and they, in connection with their Capitol complex, were proposing to move towards the Michigan Avenue School, and eventually did, and moved right up to the building.

Q. And did the State's action also affect its—or, contemplated actions affect the decisions the Board had to make while you were a member? A. Yes. The 496 freeway was built within a block, I think it is, of where the Lincoln School used to be, and that took 300 and some families out when this was built. In addition, the Highway Department, of course, is still talking about what they are going to do about the Logan Street area, and have already acquired some houses in that area, too, which Logan Street—Lincoln School used to be right on Logan Street.

Mr. Newman: You may cross-examine.

[77] **Cross-Examination** of Clarence H. Rosa

By Mr. Davis:

Q. Mr. Rosa, I don't want to put the cart before the horse, but did I understand you to indicate that you were recalled in 1972? A. Yes, sir.

Q. Now you have testified that since from 1957 till 1972 you served on the School Board? A. That's correct.

Q. And as a member of the School Board, you had an opportunity to watch the population migration or population shift in terms of where the blacks were moving, et cetera? A. That's correct.

Q. You had an opportunity to serve on a number of study groups and have a lot of reports submitted to you on what you should do about the race problem in the City? A. That's correct.

Q. I think there was a 66 Citizens Committee and a number of others, is that correct? A. That's correct, we had several.

Q. Based upon this wealth of information that you acquired over this period of time, did there come a time at which you proposed a desegregation plan or voted for a desegregation plan? **[78]** A. We certainly discussed several plans for promoting desegregation, including the one-way bussing of elementary school kids, the plans that were referred to for accomplishing some desegregation at the junior and senior high school levels.

Q. You supported, did you not, the Cluster Plan that is now in effect? A. Yes, sir.

Q. And as a result of that support, you were recalled, correct? A. That's correct.

The Court: Why did you support the plan?

The Witness: I believe in it. I believe that desegregation of our elementary—in our school systems is pretty important; that

whenever it can be accomplished, I think we should accomplish it, and I think in our community in Lansing we arrived at a time when I felt that it could be accomplished. We had flirted with the idea, you know, since the late '50s, since '59 or '60 we flirted with it, and we had been moving towards it in one way or another, but it wasn't until 1971 that we really came to grips with a pretty complete desegregation program at the elementary level. I think we had good desegregation at the secondary level **[79]** prior to 1966, but we were scared to death of this elementary situation. We studied it and worked with it until we finally felt we had one that our community could live with. Maybe some other communities couldn't, but we certainly—at least I felt our community could.

The Court: And that was the present plan?

The Witness: Yes, sir.

The Court: That's in operation now?

The Witness: That's correct.

The Court: Now you were asked about concern for a racial balance. What was your object in concern for racial balance?

The Witness: My purpose——

The Court: That you seek to obtain, what was your ultimate end?

The Witness: Okay. My personal object—everybody has different thinking on this.

The Court: Yes.

The Witness: I had looked back to see what had happened in the past 15, 20 years, and where minorities had come from during that period of time, and I was convinced in my own mind we were going to make progress in the future just as we had made progress in the past; that my own children, or maybe, more importantly, **[80]** my grandchildren, are going to be em-

ployed by people of another race, they are going to be working next to people of another race, they are going to be neighbors of somebody from another race, and that if that is going to happen —and I fully believe that it will—it is going to happen comfortably only if you are comfortable with somebody from another race. I am not sure that I personally always am, but I think it is important that these young people do develop that kind of rapport where they can live with and work for and work with somebody of a different race than they are, and that the best way for them to—or one way—not necessarily the best, but a way that we have a chance of achieving now is for them to associate in school, and therefore I felt it important that we desegregate our schools and arrive at that kind of brotherhood, I guess you would call it, for our children and our grandchildren. And that's why I felt it was important.

The Court: All right.

The Witness: Some people think it is more unimportant, some people think it is Constitutionally important. I simply felt it was necessarily a part of a good education program.

The Court: Would you call that the ultimate end of that kind of program an equality of **[81]** education?

The Witness: Equality enters into it, but I think there is more than equality involved, more than saying, "Well, everybody is going to get an equal education." I think the plus is that we get a complete education by becoming brothers with our brothers.

The Court: Under the Constitutional requirement, equal protection of the law——

The Witness: Yes.

The Court: ——was that one of your objectives?

The Witness: Not necessarily.

The Court: Not necessarily?

The Witness: No.

The Court: But would that be one of the results?

The Witness: I think it would be. We were interested in watching the—when we started one-way busing of elementary kids in—I am not sure of the year, '68 or thereabouts—some of us were wondering—and this was occurring at a time when there was a lot of pressure on the west side, a lot of homes being ripped out, black families were being forced to move; okay? There was a lot of question in our minds, and I felt, and it turned out I was wrong, I felt when you had **[82]** one-way bussing and black families then become involved in the PTA and so forth over in this white neighborhood, and those white people in this white neighborhood become acquainted through PTA and so forth with black families, and everybody says, "Well, this really isn't such a bad thing at all," that as black families were pushed out of the west side, they would be encouraged to settle in the white areas. Okay? That didn't happen. It happened some, but not to early the extent that I thought it would, and I am not sure why. I suspect in part maybe it was easier to do, but the black families merely moved to the adjacent area rather than into a new area to desegregate.

The Court: All right. Any more questions?

Mr. Davis: Thank you, Mr. Rosa, we have no further questions.

Redirect Examination of Clarence H. Rosa

By Mr. Newman:

Q. Again, not because I am seeking publicity, but the fact is that your Board that was subjected to the recall actually hired me to represent your Board in that litigation? A. That's correct, and you did a good job for us.

Q. And you instructed me to do everything I could to prevent the enjoining of the recall election because **[83]** you felt the people were entitled to cast a vote on this issue? A. That's correct.

EXCERPTS FROM TESTIMONY OF
[387] DENNIS SEMRAU,

called as a witness by the Defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Newman:

Q. State your name, please? A. Dennis Semrau.

* * * * * * *

Q. Are you employed? A. Yes, I am.

Q. What is your employment? A. I am a principal at Lewton Elementary School.

Q. Would you state what your educational background is, starting with high school? A. Starting with high school?

Q. Yes, sir. A. I am a graduate of the Lansing School District from Eastern High School in January of 1955. I attended Western Michigan University, graduated in 1959, and I attended Eastern Michigan University, graduated in 1963.

Q. And what degrees do you have? A. I have a B.S. from Western Michigan, and an M.A. from **[389]** Eastern Michigan.

Q. Now how long have you been associated with Lansing School District as an employee? A. I am going on my fourteenth year.

Q. And will you tell us what the first position was that you held in Lansing School District? A. I was an elementary

teacher at Lincoln Elementary School, and I had combination 4th and 5th grade.

Q. And when was that? A. That was 1962-63.

Q. And when you were at Lincoln Elementary School, who was the principal? A. Olivia Letts.

Q. Now Mrs. Letts was black, was she not? A. Yes.

Q. Were there any other black certificated personnel at Lincoln School when you were there, if you remember? A. I remember at least two.

Q. And were there any whites at the school who were in a teaching capacity? A. There were four.

Q. And who were they, if you remember? A. Let's see. Genevieve Rice was one. Nina Palmer, who has just recently retired from Holmes Street School.

The Court: Perhaps if you could talk **[390]** a little louder, pull the microphone closer to you.

A. And I cannot remember the redhead's name, but it was a young lady.

Q. And there were four or five white teachers there? A. There were four.

Q. Including you? A. And there are three minority teachers: Eunice Calhoun. Andy Anderson was in Special Education. And there was one other lady I cannot remember her name.

* * * * * * *

Q. After you were engaged at Lincoln School, were you assigned to any other school or any other position? A. The following year and for the next five years I was an elementary phys-ed teacher.

* * * * * * *

Q. And after you were physical education teacher, what did you do? A. I was appointed as principal at Michigan Avenue Grade School.

Q. And about what year was it that you were appointed? **[391]** A. That was in 1968.

Q. And how long did you remain at Michigan Avenue? A. Until last June, which would be a total of seven years.

Q. What was the racial makeup of Michigan Avenue when you arrived there? A. Of the students?

Q. Yes, the students? A. It was well over 80 percent minority.

Q. And do you recall the names of teachers who worked with you at Michigan Avenue School over that seven year period and what their racial background was? A. The first year I was at Michigan Avenue, '68-69, we had a total of three out of fourteen minority teachers.

The following year, '69-70, we had a total of 4 out of 13 minority teachers.

The following year, 1970-71, we had a total of 5 out of 13 minority teachers.

And the last year before the Cluster, we had a total of 5 out of 13.

Q. Now in your experience with the teachers that you have named, will you state to this Court your opinion as to their competence to serve in Michigan Avenue while you were there? A. I can honestly say that we had very fine staff from the beginning when I arrived at Michigan Avenue, and a super **[392]** staff the year that I left.

Q. And are you aware as to whether or not any of the minority teachers with whom you served in Michigan Avenue School have gone on to higher positions, administrative positions, or advanced since they were there? A. Of the minority

staff that I have had at Michigan Avenue, two of them are presently elementary principals.

Q. And who are they? A. Eunice Calhoun, who is Mrs. DeMeyers now, and David Henderson.

* * * * * * *

Q. Did you have any complaints from parents of minority students about the fact that there were four or five minority teachers at Michigan Avenue School? A. Very, very few.

Q. Did you have any complaints because of the presence of white—a majority of white teachers there? A. We did not.

Q. Did you have any complaints with regard to a lack of experience on the part of any teacher with whom you served at Michigan Avenue School? A. It was brought up a couple of times, yes.

[393] Q. Now whose lack of experience was brought up? A. Teachers that were assigned to Michigan Avenue School.

Q. The teacher brought it up? A. No, a couple of parents, but the most complaining came when the Cluster began, so that's later on.

Q. I am talking about before the Cluster. A. Right.

Q. What was your experience with the provision of—by the Board of Education of equivalent facility in materials that were needed for instructional purposes while you were at Michigan Avenue School? A. Most normally if I would ask for something, I received it.

Q. Did you have any experience with being denied anything because this was a minority school? A. Supplies and materials, no.

Q. What kind of building was Michigan—or, is Michigan Avenue School as far as structure is concerned? A. The outside structure is very solid. The inside structure is old, and at times it seems to be falling apart.

Q. Were you aware of any plans for Michigan Avenue School? A. Yes, when I was——

Q. That may have had something to do with its physical condition? A. When I was hired, I was told that the school would be opened three more years and would be replaced, more than **[394]** likely, by a new building.

Q. Three years came and went and the school wasn't replaced? A. That is correct.

Q. Do you know what has finally happened to the school? A. The State of Michigan has purchased Michigan Avenue School.

* * * * * * *

[395] Q. With regard to the staff that you had at Michigan Avenue, do you have an opinion as to whether that staff was competent and qualified to teach white students? A. I believe they would have, yes, very competent.

Q. And were they competent and qualified to teach the black **[396]** students? A. Yes, sir.

Q. And did the staff or part of the staff remain with you after the Cluster program was inaugurated? A. Yes, sir.

Q. And will you state, do you have an opinion as to whether that staff was competent and capable of teaching the mixed students? A. Very much so.

* * * * * * *

Q. Were there any other employees or persons that worked at Michigan Avenue School in addition to you and the certificated personnel? A. We had State and Federal monies allocated to our building, and we did have—we did hire a full-time reading teacher, teachers' assistants, normally called "teachers' aides," but teacher assistants in class, and we liked that.

We had, in the second year I was there, we had elementary phys-ed, art, and music teacher, and these are some of the extras that we had with Title I, Chapter 3 funds.

Q. How many aides were in the building? How many teachers' aides? **[397]** A. We had 10 in the beginning of the year.

Q. That would be in addition to the 13, 10 teachers? A. That's correct.

Q. Now did you include in the 13 the art teacher and the physical education teacher? A. I did not.

Q. Were those two teachers full-time in the building, or did they travel? A. They were full-time in the building for one year.

Q. And that was because of the availability of Federal funds? A. That's correct.

Q. Was this additional personnel available in other schools in the School District other than Michigan Avenue? A. At that time when it was called Section 3, I believe, Kalamazoo and Michigan were the only ones receiving State of Michigan funds.

Q. What did you find with regard to the achievement rate of your students at Michigan Avenue in the fields of math and reading? A. We—I understand you have gone over some of the test results already, but we found that our lower level, K-1 and 2, were doing well. And once they hit third and fourth, for some reason, I think this was at the time a National trend, they started going down as far as staying **[398]** at City level and National level.

Q. Was that true as to both reading and math? A. That's correct.

Q. Did you institute any programs to try to turn the situation around to improve the achieved grade? A. We did institute the DISTAR Program and the Beureiter-Engleman Pro-

gram, the program in reading, math, and language, and the first year we did not see the results we wanted, and we were told that the second year is the year of the product, and it did improve the following year. As far as the DISTAR Program was concerned, we had this primarily in K-1 and 2. We instituted the Sullivan Reading Program, BRL, in the upper levels, and again we did not see the results the first years we were there, and we were told that you will see the results the second and the third year. And they, the results were there, but we were already behind, so it didn't show the thrust that it should have shown.

Q. Have you had any experience with Spanish surnamed students? A. We had very few at Michigan Avenue. In fact, in the seventh year we had one family that could not speak English.

* * * * * * *

[399] Q. Do you have an opinion as to whether or not any condition affected the rate at which children were learning, or at least at which—which affected the average rate reported on the testing scores with regard to the math or reading because of any problems at Michigan Avenue School? A. The main problem that we had at Michigan Avenue School was mobility rate. And by "mobility rate," I mean we could start with 280 students at the beginning of the school year, and by the end of the year, out of the 280, maybe 70 would be there, and we would have the big turn-over of the other 210.

Q. How would that affect the average testing score? A. Well, when you test children you don't separate out the children who have been there one week, two weeks or ten months. You test them all at the same time. And if the child has arrived at your school and hasn't been in school at all for the school year, and then is tested, they average these all together, and it definitely would pull the average down.

* * * * * * *

Q. Were you acquainted with J. E. Hayes? A. Mr. Hayes, yes, I know Mr. Hayes.

Q. Is he with the Lansing School District at the present time? A. He is.

Q. What is his position? A. He is the area principal at Lyons Avenue School.

Q. What does that mean? A. He is responsible for a certain number of principals within the School District, and I believe it is eight or nine he is directly responsible for.

Q. He is the principal also at Lyons? A. That's correct.

Q. Do you know where he served prior to the time he became **[401]** area principal? A. I have heard he served at Main-Street School.

Mr. Newman: You may cross-examine.

Cross-Examination of Dennis Semrau

By Mr. Davis:

Q. Excuse me, sir. How do you pronounce your last name? A. "Semrau."

Q. Mr. Semrau, I am intrigued by the description you gave of the persons who taught at Lincoln. I believe you said you were there in 1962-63? A. That is correct.

Q. And can you indicate to the Court what the racial composition of the students was in 1962-63? A. It was just about the percentage Michigan Avenue is at the present.

Q. There were very few whites there, were there not? A. That's correct.

Q. And you are aware, are you not, that when Lincoln Street School closed it closed on an entirely black basis, all the students were black? A. Yes, sir.

Q. So it would be fair to say, at least of the time you are aware of, that Lincoln could be called a black school? A. Yes, sir.

Q. Now, you indicate that the principal was black? **[402]** A. That's correct.

Q. And you indicate that there were three other black teachers, is that correct? A. That's right.

Q. Then there were four white teachers? A. Correct.

Q. So the staff, including the Principal and the teachers, was 50 percent black? A. Correct.

Q. And you knew, did you not, that assigning black teachers to the black schools was a conscious decision, it was deliberate? A. I do not have that knowledge, sir.

Q. Well, let me ask you this: Other than the black schools, that being Lincoln, Kalamazoo, and Michigan, do you know of any other school in the District that had 50 percent black teaching personnel? A. At that time?

Q. Yes. A. No, sir.

Q. As a matter of fact, you know for a fact that no other school did have 50 percent black? A. That's correct.

Q. Now, at the time Lincoln received their black principal, were you aware of any other black principals in the **[403]** District? A. I was not.

Q. That was the only black principal, correct? A. That I was aware of, yes.

Q. And she was at the black school? A. That's correct.

Q. You indicate in that same regard that you then went to Michigan Avenue School? A. After five years as an elementary phys-ed teacher.

Q. And you began in '68? A. That's correct.

Q. And you indicate that the percentage of that school was about 80 percent black? A. Right.

Q. And then you indicate that in the years from '68 through when you left in '72, there for the first year, '68-69, three of fourteen of the teachers were black; by 1975—or, by 1969-1970, four of the thirteen were black; by 1970-71, five of the thirteen were black, is that correct? A. Yes.

Q. And then there were five black teachers out of thirteen in '71-72? A. Five out of thirteen, right.

Q. Now you are aware of the fact, are you not, that there was no other school within the Lansing School District **[404]** that had, whatever percentage, 5/13ths, aren't you? A. Yes, sir.

Q. Again I ask you, in your experience, don't you know that this decision to have black teachers in black schools was a conscious decision? A. I do not know that, and I was told that I had too many, so I would receive no more.

Q. You were told you had too many black teachers? A. That's correct, percentage wise.

Q. Who told you this? A. It came from the personnel office.

Q. When? A. It would have been 19—the end of '72.

Q. Pardon? A. At the end of '72.

Q. The end of '72? A. That is correct.

Q. Dr. Candoli would have been superintendent at that time, correct? A. I believe so.

Q. You indicate that one of the problems of complaints the parents had was lack of experience of teachers, is that correct? A. That's correct, once the Cluster began.

Q. And do you recall when this complaint was made? **[405]** A. Well, day one when the Cluster began.

Q. And who made the complaint? A. Parents from the south end of town.

The Court: Parents from the what?

The Witness: The parents of the students who were bussed into Michigan Avenue School.

Q. White parents? A. That's correct.

Q. They came into Michigan Avenue and looked around and said or complained to you that teachers don't have enough experience at this school? A. They zeroed in on two teachers, two new sixth grade teachers. Super sixth grade teachers, too.

The Court: You mean they were super teachers?

The Witness: They were, yes, sir.

By Mr. Davis:

Q. Prior to engaging in the Cluster or prior to bringing the white students in, there was no discussions or controversy about the experience of the teachers? A. I cannot remember any, no.

Q. You are aware, are you not, that generally speaking and in comparison to the District as a whole the teachers at Michigan School tended to be less experienced? I am not getting to competence at all, but just in terms of **[406]** experience? A. As a general statement, that would be correct.

Q. Another statement that you made, I believe you described the interior portions of Michigan Avenue School as falling apart. Can you indicate what you meant by that? A. Well, prior to 1972 there needed to be a massive correction of walls. Around the radiators were cracking and peeling and falling apart that needed to be corrected.

Q. Does anything else go into your description of falling apart? A. Faded colors, sad colors, institutional blues and greens and grays.

Q. Was there any problem at all with heating at Michigan Avenue School? A. It was hot during the wintertime, if that's a problem, yes, they had a problem.

The Court: You mean overly heated?

The Witness: Yes, sir.

Q. Do you say that any of these problems, heat, et cetera, may have contributed somewhat to inattention of the students or may have bothered the students at all? A. That is very possible.

Q. It could have affected their performance somewhat? A. Yes.

Q. Were any of these conditions brought to the attention **[407]** of the Board of Education? A. Yes, sir, they were.

Q. Was the School ever renovated or anything of that nature? A. 1972, it was.

Q. In 1972? A. Right. And I believe three years before I arrived there, they put new lighting into the building.

Q. That was prior to your arrival, did you say? A. Prior to my arrival.

Q. I think you have already covered this, but just to make sure, you were aware, were you not, that the achievement level of students at Michigan Avenue School was not up to par with the School District average? A. I am aware, yes.

Mr. Davis: Thank you, sir.

Redirect Examination of Dennis Semrau

By Mr. Newman:

Q. Mr. Semrau, I have a couple of other questions. Do you know whether Mrs. Letts is still associated with Lansing School District? A. Yes, she is.

Q. And what is her capacity? A. She is the principal at Horsebrook School, and also an area principal.

Q. She has a position similar to that of Mr. Hayes? **[408]** A. That is correct.

Q. Do you know if she served in any other elementary schools as principal before she arrived at Horsebrook? A. I believe she was at Post Oak.

* * * * * * *

EXCERPTS FROM TESTIMONY OF WILLIAM WEBB

[697] The Court: Let us proceed then with the demonstaration to the Court with reference to the map of the operation of the Cluster Plan, and I will see if I need any additional information, I will evaluate it when you conclude.

(Mr. William L. Webb proceeded to the map and testified as follows:)

Mr. Webb: We have in operation at the present time, your Honor, three Clusters. It might be easier if we took this top acetate sheet off.

The Court: Is the Superintendent leaving?

Mr. Newman: No, sir, I think he is going to tell somebody to start to work on that information, your Honor.

Mr. Webb: Right. Okay. Clluster I is composed of four individual buildings. Now the Clusters are defined as a school, so that the four units within the Cluster compose, in effect, one building. And in this we have, in Cluster I, Lewton, Elmhurst, **[698]** Barnes, and Main compose Cluster I.

Now in Lewton School we have—in all of the units within the Cluster, youngsters in grades kindergarten, first, and second remain in the so-called "home unit." Then that home unit has in addition either grades three and four or grades five and six.

Lewton School has grades three and four. Now the youngsters that come from Main, the 3rd and 4th grade from Main come into Lewton, plus the 3rd and 4th grade from Lewton remain at Lewton. Okay.

Elmhurst has grades five and six. The 5th and 6th grade from Lewton goes to Elmhurst. A part of the 5th and 6th grade from Main comes to Elmhurst.

Barnes has grades three and four. The 3rd and 4th grades from Elmhurst, part come to Barnes and part come—well, no. The 3rd and 4th grades from Elmhurst go to Barnes. The 5th and 6th grade from Barnes go to Main, where they have a 5th and 6th grade.

So, as you can see, it is a sharing within the unit of the Cluster.

Cluster II is composed of Michigan Avenue School, which sets here, and Everett Elementary School, Maple Hill School, and Cavanaugh School. So we have Cavanaugh, Everett, Maple Hill, and Michigan Avenue.

In this particular Cluster, Cavanaugh has **[699]** grades three and four, and they receive grades three and four from Michigan Avenue.

Maple Hill has grades three and four. They receive grades three and four from Everett, plus they are part of the one-way bussing. Youngsters from the Kalamazoo area also come into Maple Hill.

Everett has grades five and six, and they receive a part of the 5th and 6th grade from Michigan, plus they receive the 5th and 6th grade from Maple Hill.

Michigan Avenue has grades five and six, and they receive the 5th and 6th graders from the Cavanaugh unit.

Cluster III is in the north end of town and is composed of Oak Park School, Cedar, Grand River, High, and Post Oak.

Once again the composition of each unit within the Cluster is the same. Cedar Street has grades three and four, Oak Park has grades three and four—excuse me. Oak Park has grades five and six. The 5th and 6th graders from Cedar go to Oak Park, plus Oak Park gets in 5th and 6th graders from Post Oak. Some 3rd and 4th graders from Post Oak come to Cedar. Grand River School has grades five and six and receives some 5th and 6th graders from Post Oak and from High. High has grades three and four, receives 3rd and 4tth graders from Post Oak, sends 5th and 6th graders to Post Oak, which has **[700]** five and six.

This is essentially the three Clusters that now exist and how they are organized.

* * * * * * *

BOUNDARY CHANGE RESOLUTION OF MARCH 28, 1957, AFFECTING MAIN STREET SCHOOL

All Board members being present, the meeting was reconvened.

It was moved by Mr. Rosa and seconded by Mr. Ebersole that the following resolution concerning the Main Street School area be adopted:

WHEREAS, the number of Negro children attending the Main Street Elementary School has been increasing materially in recent years until at the opening of school in September of 1956 the school was slightly overcrowded and the enrollment consisted of 62% Negroes, which overcrowding was soon eliminated and the percentage of Negroes reduced to 55% by adjustments to school boundaries; and

WHEREAS, the Board of Education considered that the trend of an increasing ratio of Negro to white enrollment at the Main Street School could develop into complete segregation, a situation not conducive to satisfactory race relations; and

WHEREAS, after the Board had unsuccessfully sought a means of reversing the trend toward a segregated Main Street School, it appointed a committee, in response to a request by parents from the area, to analyze the conditions and recommend corrective measures; and

WHEREAS, the committee recommended that the Board of Education (1) adjust further the school boundaries to reduce the Negro to white ratio, (2) improve the educational facilities at the school, and (3) promote an integrated residential community by cooperating with a committee to be appointed by the Mayor for this purpose, with further recommendations from a minority of the committee that the Board (4) permit parents to transfer any child in the Main Street School to another Lansing school and (5) immediately construct an elementary school in the Heatherwood area; and

WHEREAS, after thorough study of the recommendations, the Board of Education has concluded that: the first recommendations cannot accomplish any material results unless some children travel unreasonably long distances, in some cases completely across a school district and into the district of a distant school, the fourth would result in Main Street School soon having an all-Negro enrollment and the fifth would vacate satisfactory facilities and force postponement of new construction elsewhere in Lansing that is required to relieve badly overcrowded schools; and

WHEREAS, all efforts have failed to produce a plan to insure racial integration at Main Street School since the cause is an increasing concentration of Negro families in the area and that the primary responsibility of the Board of Education is to pro-

vide adequate educational facilities and instruction for pupils living within the service areas of its schools; now therefore be it

RESOLVED, that we continue at Main Street School the presently inaugurated program of providing equally good educational opportunities for all children by maintaining (1) minimum class loads, (2) special classes for slow learners in reading and arithmetic, (3) special classes for gifted children and (4) a special room for emotionally disturbed children; and be it

RESOLVED, that the boundaries of the Main Street School remain essentially as they are except for such modifications as may develop from the city-wide study that the Superintendent is conducting of school boundaries and such additional modifications as may be necessary relieve any overcrowding that may develop in the future, which modifications will be made to promote integration wherever possible; and be it

FURTHER RESOLVED, the Board of Education seek recognition by the city that this is not an educational problem but one which is the responsibility of the entire community and that a city-sponsored study be made for a solution in accordance with the third recommendation of the committed noted above.

Carried, no dissenting votes.

/s/ Nellie K. Nussdorfer
Secretary, Board of Education

Wilma Brown, Clerk

BOUNDARY CHANGE RESOLUTION OF JULY 8, 1957, AFFECTING MICHIGAN, VERLINDEN AND KALAMAZOO SCHOOL AREAS

Boundary changes in the Michigan, Verlinden and Kalamazoo School areas:

(1) The Michigan Avenue School area shall include the area from Logan Street west to Jenison Avenue between Kalamazoo Street and Washtenaw Street. A corresponding change shall be made in the Kalamazoo Street School area.

(2) The area between the city limits on the west and Jenison Avenue on the east, and between Michigan Avenue on the south and Ottawa Street and Ottawa Street extended to the city limits on the north shall be removed from the Michigan Avenue School area and added to the Verlinden School area.

Carried, no dissenting votes. July 8, 1957.

ELEMENTARY SCHOOL ENROLLMENTS HISTORY

School	1920-21	1921-22	1922-23	1923-24	1924-25	1925-26	1926-27	1927-28	1928-29	1929-30
Allen	526	510	598	642	578	640	750	762	763	828
Attwood										
Averill										
Barnes	174	229	300	388	435	472	477	523	466	453
Bingham	440	419	452	433	423	422	390	403	401	381
Cavanaugh										
Cedar	657	519	591	675	507	519	472	514	542	512
Cherry	222	235	243	253	182	176	175	166	180	200
Christiancy	482	408	488	528	550	482	451	476	457	471
Cumberland										
East Park	452	331	347	258	360	351	(name changed to Oak Park)			
Elmhurst										
Everett Elementary										
Fairview										
Forest Road										
Forest View										
Foster	504	564	561	553	576	585	542	554	594	579
Franklin	401	416	460	463	361	402	(transferred to Grand River)			
Franks										
Genesee	548	414	434	498	496	514	523	538	505	523

School	1920-21	1921-22	1922-23	1923-24	1924-25	1925-26	1926-27	1927-28	1928-29	1929-30
Gier Park										
Grand River						(new)	412	394	383	384
Gunnisonville										
High				(new)	254	282	287	278	335	336
Holmes			(new)	280	464	455	450	441	457	524
Horsebrook										
Kalamazoo	505	441	475	417	612	650	640	628	671	625
Kendon										
Larch	346	279	281	291	298	290	246	266	272	307
Lewton										
Lincoln										
Logan	382	366	340	393	314	338	313	329	324	173
Lyons										
Main									(new)	269
Maple Grove										
Maple Hill										
Maplewood	228	266	300	371	402	330	367	389	401	433
Michigan	493	412	437	425	439	452	468	452	516	454
Moores Park	464	360	378	378	375	375	374	362	357	314
Mt. Hope										
North										

School	1920-21	1921-22	1922-23	1923-24	1924-25	1925-26	1926-27	1927-28	1928-29	1929-30
Northwestern										
Oak Park					(formerly East Park)		367	375	406	449
Pleasant Grove										
Pleasant View										
Post Oak										
Reo										
Sheridan Road										
Thomas								(annexed)	269	305
Valley Farms										
Verlinden										
Wainwright										
Walnut	455		373	412	397	481	466	501	441	486
Warner	251	264	339	406	465	424	(name changed to Willow)			
Walter French					(new)	236	223	240	230	217
Wexford										
Willow							449	459	490	536
Woodcreek										
Open Air	51	74	100	90	85	95	81	91	89	88
Special	39	49	42	49	34					
West Junior (new)	158	47								
Total Elementary	7,778	6,975	7,539	8,303	8,607	8,971	8,923	9,141	9,549	9,847

School	1930-31	1931-32	1932-33	1933-34	1934-35	1935-36	1936-37	1937-38	1938-39	1939-40
Allen	744	717	666	750	759	745	760	728	715	678
Attwood										
Averill										
Barnes	462	476	435	447	494	439	466	424	370	373
Bingham	364	344	305	294	292	274	258	252	275	238
Cavanaugh										
Cedar	437	420	427	424	395	411	374	416	356	307
Cherry	163	155	119	(closed)						
Christiancy	438	461	421	455	442	443	414	401	416	397
Cumberland										
East Park										
Elmhurst										
Everett Elementary										
Fairview										
Forest Road										
Forest View										
Foster	649	619	668	682	702	730	686	645	630	635
Franklin										
Franks										
Genesee	331	320	316	316	337	348	336	320	266	272

School	1930-31	1931-32	1932-33	1933-34	1934-35	1935-36	1936-37	1937-38	1938-39	1939-40
Gier Park										
Grand River	304	316	307	332	343	370	338	313	318	311
Gunnisonville										
High	390	441	465	501	523	531	526	448	391	393
Holmes	519	500	527	557	539	533	526	505	490	448
Horsebrook										
Kalamazoo	570	587	631	746	757	741	770	609	532	527
Kendon										
Larch	237	221	247	252	267	275	246	233	206	212
Lewton										
Lincoln							(new)	233	208	213
Logan	158	148	(name changed to Lincoln)							
Lyons										
Main	273	275	300	316	298	337	314	227	238	248
Maple Grove										
Maple Hill										
Maplewood	430	426	419	401	442	462	424	460	400	381
Michigan	370	361	381	369	361	342	290	260	272	263
Moores Park	303	271	276	306	336	339	314	284	278	295
Mt. Hope										
North										

School	1930-31	1931-32	1932-33	1933-34	1934-35	1935-36	1936-37	1937-38	1938-39	1939-40
Northwestern										
Oak Park	443	458	429	378	435	430	437	404	433	404
Pleasant Grove										
Pleasant View										
Post Oak										
Reo										
Sheridan Road										
Thomas	281	276	299	325	337	345	320	386	420	415
Valley Farms										
Verlinden (new)	253	269	283	295	319	331	317	297	292	278
Wainwright										
Walnut	415	448	455	506	473	482	476	437	526	553
Warner										
Walter French	212	201	219	231	233	227	238	227	228	218
Wexford										
Willow	428	425	456	443	510	522	468	466	429	404
Woodcreek										
Open Air	45	47	48	(located at Genesee—moved to Walnut 1938 [Sp. Health Students])						
Special										
West Junior										
Total Elementary	9,219	9,212	9,119	9,326	9,594	9,657	9,298	8,975	8,689	8,463

School	1940-41	1941-42	1942-43	1943-44	1944-45	1945-46	1946-47	1947-48	1948-49	1949-50
Allen	698	655	689	680	656	629	598	572	608	559
Attwood										
Averill										
Barnes	392	372	441	452	470	472	470	502	548	470
Bingham	222	218	186	188	209	186	189	213	226	249
Cavanaugh										
Cedar	258	284	304	283	237	230	226	224	232	202
Cherry										
Christiancy	368	382	354	331	329	303	321	305	302	301
Cumberland										
East Park										
Elmhurst										
Everett Elementary										
Fairview										
Forest Road										
Forest View										
Foster	566	523	552	549	556	539	518	553	583	568
Franklin										
Franks										
Genesee	259	249	269	254	238	264	283	302	340	325

School	1940-41	1941-42	1942-43	1943-44	1944-45	1945-46	1946-47	1947-48	1948-49	1949-50
Gier Park										
Grand River	278	259	261	260	227	252	253	251	266	221
Gunnisonville										
High	385	401	384	363	379	351	328	338	328	317
Holmes	418	398	405	399	419	418	398	382	385	402
Horsebrook										
Kalamazoo	479	494	519	508	462	546	535	523	535	423
Kendon										
Larch	207	209	206	213	194	169	164	110	99	93
Lewton										
Lincoln	190	193	186	187	188	184	193	177	207	187
Logan										
Lyons										
Main	238	239	251	253	253	231	231	234	235	238
Maple Grove										
Maple Hill										
Maplewood	406	393	413	435	398	347	354	381	412	329
Michigan	248	235	247	265	241	209	208	220	212	197
Moores Park	271	315	276	273	271	265	262	267	271	263
Mt. Hope									(new)	318
North										

School	1940-41	1941-42	1942-43	1943-44	1944-45	1945-46	1946-47	1947-48	1948-49	1949-50
Northwestern										
Oak Park	429	421	404	391	369	330	327	361	312	320
Pleasant Grove										
Pleasant View										
Post Oak										
Reo										
Sheridan Road										
Thomas	421	371	381	376	390	374	338	359	368	382
Valley Farms										
Verlinden	277	258	260	268	261	263	268	309	274	279
Wainwright										
Walnut	563	522	516	522	510	563	481	544	507	508
Warner										
Walter French	225	218	217	224	224	251	283	300	346	197
Wexford										
Willow	423	403	410	399	401	408	403	381	374	361
Woodcreek										
Jr. Vocational										12
Open Air										
Special										
West Junior										
Total Elementary	8,221	8,012	8,131	8,073	7,882	7,784	7,631	7,808	7,970	7,721

School	1950-51	1951-52	1952-53	1953-54	1954-55	1955-56	1956-57	1957-58	1958-59	1959-60
Allen	606	601	628	664	613	631	611	612	599	573
Attwood										
Averill										
Barnes	606	379	405	414	394	384	476	429	444	403
Bingham	265	247	280	326	315	307	382	375	388	411
Cavanaugh								(new)	435	466
Cedar	216	217	246	227	264	259	266	248	247	244
Cherry										
Christiancy	312	298	326	352	352	360	360	213	231	212
Cumberland									(new)	150
Community										
East Park										
Elmhurst	(new)	294	386	492	593	633	640	639	565	579
Everett Elementary										
(annexed)	1,082	1,111	875	890	801	797	812	923	622	613
Fairview				(new)	318	363	407	440	452	510
Forest Road										
Forest View										
Foster	596	635	676	689	606	631	599	581	562	593
Franklin										
Franks										
Genesee	314	332	338	320	277	312	300	308	310	322

School	1950-51	1951-52	1952-53	1953-54	1954-55	1955-56	1956-57	1957-58	1958-59	1959-60
Gier Park			(new)	367	405	401	411	396	432	404
Grand River	220	239	253	274	264	259	254	266	224	271
Gunnisonville										
High	312	345	351	371	360	376	406	411	411	414
Holmes	440	437	465	503	504	469	457	484	492	492
Horsebrook								(annexed)	171	156
Hurd										
Kalamazoo	455	453	492	500	529	531	551	557	558	559
Kendon								(new)	214	294
Larch	(transferred to Logan)									
Lewton							(new)	115	195	410
Lincoln	164	191	179	177	179	166	180	188	180	158
Logan										
Lyons		(new)	175	231	262	304	317	297	295	316
Main	252	261	299	345	367	386	368	362	360	381
Maple Grove										
Maple Hill	189	(new)	195	256	323	361	365	364	284	315
Maplewood	372	427	409	421	387	343	373	411	412	418
Michigan	212	232	263	271	268	271	238	296	306	333
Moores Park	294	237	260	288	276	274	263	334	366	373
Mt. Hope	362	362	415	433	430	412	428	476	471	434
North										

School	1950-51	1951-52	1952-53	1953-54	1954-55	1955-56	1956-57	1957-58	1958-59	1959-60
Northwestern									(annexed)	398
Oak Park	362	404	415	449	350	327	315	351	344	344
Pleasant Grove									(annexed)	616
Pleasant View									(annexed)	382
Post Oak										
Reo										
Sheridan Road										
Thomas	396	355	357	(closed—opened Gier Park)						
Valley Farms										
Verlinden	275	298	284	289	284	298	307	319	305	342
Wainwright										
Walnut	493	490	459	459	460	487	525	480	478	493
Warner										
Walter French	(closed elementary)									
Wexford										
Willow	356	396	507	521	549	559	546	589	609	580
Woodcreek										
Jr. Vocational	11	13	10							
Open Air										
Special										
West Junior										
Total Elementary	8,973	9,254	9,948	10,529	10,730	10,901	11,157	11,464	11,972	13,959

School	1960-61	1961-62	1962-63	1963-64	1964-65	1965-66	1966-67	1967-68	1968-69	1969-70
Allen	575	568	564	501	509	512	575	557	514	437
Attwood					(new)	412	423	445	429	499
Averill				(new)	361	429	514	572	508	522
Barnes	403	399	425	396	409	420	385	376	417	414
Bingham	392	410	395	360	384	394	362	364	373	393
Cavanaugh	485	538	564	590	494	465	490	482	451	405
Cedar	247	198	206	242	243	216	226	154	137	132
Cherry										
Christiancy	223	243	242	265	233	247	237	236		
Cumberland	164	237	271	289	295	315	329	356	375	366
Community		(annexed)	119	101	89	53	(closed)			
East Park										
Elmhurst	563	607	568	610	539	491	501	508	494	507
Everett Elementary	594	618	582	579	588	572	520	514	505	498
Fairview	534	498	516	512	509	450	465	460	417	441
Forest Road			(annexed)	165	130	166	170	159	159	156
Forest View			(annexed)	248	235	246	235	243	239	220
Foster	543	556	549	465	485	535	499	484	470	460
Franklin										
Franks					(new)	213	212	220	202	209
Genesee	335	324	321	334	334	331	308	307	305	315

School	1960-61	1961-62	1962-63	1963-64	1964-65	1965-66	1966-67	1967-68	1968-69	1969-70
Gier Park	408	411	425	406	402	393	374	362	348	454
Grand River	308	503	519	488	503	474	485	504	490	488
Gunnisonville					(annexed)	269	351	330	357	377
High	395	407	378	382	378	371	387	355	344	348
Holmes	492	479	485	462	524	469	486	408	410	505
Horsebrook	182	198	190	186	192	198	226	236	228	240
Hurd					(annexed)	144	129	105	127	108
Kalamazoo	552	551	559	578	605	556	414	414	204	200
Kendon	301	335	419	425	395	397	367	390	364	349
Larch										
Lewton	312	346	369	448	419	439	412	419	405	388
Lincoln	171	167	184	179	135	13	79	42	30	56
Logan										
Lyons	305	323	324	294	300	290	275	265	279	289
Main	395	403	434	442	399	371	312	312	285	305
Maple Grove					(annexed)	401	366	391	425	420
Maple Hill	314	320	303	312	281	249	264	264	278	297
Maplewood	396	376	409	396	422	402	397	412	427	393
Michigan	331	328	351	368	355	390	363	356	344	328
Moores Park	374	355	399	420	424	382	370	397	416	439
Mt. Hope	435	431	451	443	433	469	429	446	454	444
North	(annexed)	854	878	849	847	565	514	516	511	501

School	1960-61	1961-62	1962-63	1963-64	1964-65	1965-66	1966-67	1967-68	1968-69	1969-70
Northwestern	422	329	314	315	310	329	360	334	309	281
Oak Park	310	264	289	300	268	249	267	239	247	226
Pleasant Grove	537	572	614	629	503	528	544	546	527	545
Pleasant View	340	334	362	526	493	491	466	442	660	673
Post Oak					(new)	319	390	457	510	538
Reo				(new)	403	433	408	419	366	414
Sheridan Road					(annexed)	478	472	490	523	552
Thomas										
Valley Farms					(annexed)	346	344	332	355	318
Verlinden	373	350	330	358	355	339	347	329	360	330
Wainwright	(new) 380	551	750	796	782	855	891	880	834	783
Walnut	433	450	465	425	460	449	456	487	449	451
Warner										
Walter French										
Wexford									251	287
Willow	602	565	562	583	580	581	574	566	607	597
Woodcreek									246	251
Jr. Vocational										
Open Air										
Special										
West Junior										
Total Elementary	14,126	15,398	16,085	16,667	17,005	19,106	18,970	18,882	18,965	19,149

School	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76	1976-77	1977-78	1978-79	1979-80
Allen	469	441	424	420	384	317				
Attwood	604	660	715	624	587	544				
Averill	537	529	502	458	471	456				
Barnes	344	318	289	271	282	281				
Bingham	324	340	331	306	315	290				
Cavanaugh	432	363	387	383	375	328				
Cedar	131	125	133	159	130	125				
Cherry										
Christiancy										
Cumberland	418	444	388	375	374	334				
Community										
East Park										
Elmhurst	574	571	556	489	456	508				
Everett Elementary	462	448	389	380	348	364				
Fairview	383	412	387	383	342	317				
Forest Road	146	138	156	164	166	194				
Forest View	208	212	218	237	214	229				
Foster	438	420	400	362	362	353				
Franklin										
Franks	341	369	367	391	344	328				
Genesee	315	350	330	293	317	324				

School	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76	1976-77	1977-78	1978-79	1979-80
Gier Park	556	546	492	479	454	478				
Grand River	477	482	417	406	393	415				
Gunnisonville	361	311	295	267	254	267				
High	384	357	372	373	349	312				
Holmes	458	419	389	382	358	353				
Horsebrook	209	202	180	164	158	163				
Hurd	(closed)									
Kalamazoo	(closed)									
Kendon	372	381	367	343	357	342				
Larch										
Lewton	468	430	375	330	311	307				
Lincoln	39	91	70	36	50					
Logan										
Lyons	345	336	327	288	303	294				
Main	318	302	283	232	239	244				
Maple Grove	489	528	560	447	483	511				
Maple Hill	271	232	198	181	189	170				
Maplewood	383	361	357	331	347	343				
Michigan	289	322	251	229	209	198				
Moores Park	300	291	324	289	265	263				
Mt. Hope	458	429	423	400	401	397				
North	493	518	542	552	540	588				

School	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76	1976-77	1977-78	1978-79	1979-80
Northwestern	357	341	355	323	310	346				
Oak Park	207	189	205	204	181	209				
Pleasant Grove	565	522	477	432	414	409				
Pleasant View	657	653	586	592	587	602				
Post Oak	493	477	462	412	407	385				
Reo	358	379	354	453	444	453				
Sheridan Road	508	531	497	479	492	475				
Thomas										
Valley Farms	317	283	277	252	239	217				
Verlinden	357	366	376	332	328	311				
Wainwright	704	693	678	622	605	577				
Walnut	447	443	424	430	415	422				
Warner										
Walter French										
Wexford	343	384	312	430	433	423				
Willow	542	538	538	517	456	486				
Woodcreek	289	331	410	454	511	545				
Junior Vocational										
Open Air										
Special										
West Junior										
Total Elementary	19,040	18,808	18,145	17,256	16,949	16,797				

ETHNIC COUNT REPORT

Five Year Period

Nov. 1967-Dec. 1971

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Allen	11/22/67	327	108	98	1	0	534	61	20	18	0	0				
	11/22/68	294	99	124	1	13	531	55	19	23	0	2				
	11/21/69	251	100	82	1	1	435	58	23	19	0	0				
	12/ 4/70	256	125	84	1	2	468	55	27	18	0	0				
	12/10/71	226	126	95	1	8	456	50	28	21	0	2				
Attwood	11/22/67	429	6	14	0	1	450	95	1	3	0	0				
	11/22/68	415	13	15	0	2	445	93	3	3	0	0				
	11/21/69	454	17	16	0	8	495	92	3	3	0	2				
	12/ 4/70	525	66	20	0	0	611	86	11	3	0	0	0	56	0	0
	12/10/71	538	79	43	0	3	663	81	12	6	0	0	0	40	0	0
Averill	11/22/67	544	27	5	0	0	576	94	5	1	0	0				
	11/22/68	462	35	10	0	0	507	91	7	2	0	0				
	11/21/69	464	43	13	0	1	521	89	8	2	0	0				
	12/ 4/70	477	43	13	0	0	533	89	8	2	0	0				
	12/10/71	441	56	26	0	1	524	84	11	5	0	0				

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Barnes	11/22/67	355	21	3	0	1	380	93	5	1	0	0				
	11/22/68	397	19	3	0	0	419	95	5	1	0	0	50	1	0	0
	11/21/69	399	16	8	0	0	423	94	4	2	0	0	46	1	4	0
	12/ 4/70	305	17	3	0	1	326	94	5	1	0	0				
	12/10/71	292	21	6	0	3	322	91	7	2	0	1				
Bingham	11/22/67	336	7	11	5	3	362	93	2	3	1	1				
	11/22/68	327	13	23	2	6	371	88	4	6	1	2				
	11/21/69	316	18	46	5	4	389	81	5	12	1	1				
	12/ 4/70	264	21	30	7	3	325	81	6	9	2	1				
	12/10/71	271	13	48	7	3	342	79	4	14	2	1				
Cavanaugh	11/22/67	477	0	0	1	3	481	99	0	0	0	1	47	0	0	0
	11/22/68	449	3	2	0	0	454	99	1	0	0	0				
	11/21/69	394	9	7	0	1	411	96	2	2	0	0				
	12/ 4/70	415	13	5	0	0	433	96	3	1	0	0				
	12/10/71	339	9	9	0	0	357	95	3	3	0	0				
Cedar	11/22/67	91	13	51	0	0	155	59	8	33	0	0				
	11/22/68	73	17	46	0	0	136	54	13	34	0	0				
	11/21/69	74	16	44	0	0	134	55	12	33	0	0				
	12/ 4/70	61	6	57	0	0	124	49	5	46	0	0				
	12/12/71	54	5	58	1	0	118	46	4	49	1	0				

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Christiancy	11/22/67	195	19	18	1	9	242	81	8	7	0	4				
	11/22/68	Regular school closed. Converted to Lincoln Center—Special Education														
Community	11/22/67	47	12	4	0	0	63	75	19	6	0	0				
	11/22/68	School closed.														
Cumberland	11/22/67	340	7	3	0	2	352	97	2	1	0	0				
	11/22/68	367	5	0	0	0	372	99	1	0	0	0				
	11/21/69	357	8	0	0	0	365	98	2	0	0	0				
	12/ 4/70	391	32	11	0	0	434	90	7	3	0	0				
	12/10/71	355	50	18	0	0	423	84	12	4	0	0				
Elmhurst	11/22/67	491	18	0	0	0	509	96	4	0	0	0	25	16	0	0
	11/22/68	456	38	0	0	2	496	92	8	0	0	0	16	36	0	0
	11/21/69	453	40	2	0	4	499	91	8	0	0	1	6	33	2	0
	12/ 4/70	523	24	18	0	3	568	92	4	3	0	1	3	17	0	0
	12/10/71	528	30	14	2	0	574	92	5	2	0	0	4	16	0	0
Everett Elem.	11/22/67	498	0	12	0	0	510	98	0	2	0	0				
	11/22/68	493	0	10	0	0	503	98	0	2	0	0				
	11/21/69	491	0	10	0	1	502	98	0	2	0	0				
	12/ 4/70	441	6	4	0	5	456	97	1	1	0	1				
	12/10/71	424	14	3	0	6	447	95	3	1	0	1				

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Fairview	11/22/67	392	57	0	0	3	452	87	13	0	0	1	2	57	0	0
	11/22/68	352	66	0	0	0	418	84	16	0	0	0	0	64	0	0
	11/21/69	354	72	5	0	3	434	82	17	1	0	1	0	72	5	0
	12/ 4/70	320	52	8	0	5	385	83	14	2	0	1	0	52	0	0
	12/10/71	335	61	8	0	7	411	82	15	2	0	2	0	57	1	0
Forest Road	11/22/67	112	40	6	0	0	158	71	25	4	0	0	0	38	0	0
	11/22/68	127	26	6	0	0	159	80	16	4	0	0	0	26	6	0
	11/21/69	137	31	6	0	1	175	78	18	3	0	1	0	25	0	0
	12/ 4/70	111	20	12	0	0	143	78	14	8	0	0	0	16	0	0
	12/10/71	111	21	10	0	0	142	78	15	7	0	0	0	14	0	1
Forest View	11/22/67	194	43	3	0	0	240	81	18	1	0	0	0	42	0	
	11/22/68	182	43	4	0	0	229	79	19	2	0	0	0	40	4	
	11/21/69	156	32	10	0	2	200	78	16	5	0	1	0	27	0	
	12/ 4/70	172	32	11	0	0	215	80	15	5	0	0	0	24	2	
	12/10/71	171	44	14	0	0	229	75	19	6	0	0	0	27	0	
Foster	11/22/67	440	10	28	3	0	481	91	2	6	1	0	51	4	0	
	11/22/68	400	48	21	9	0	478	84	10	4	2	0	0	39	0	
	11/21/69	358	62	26	4	5	455	79	14	6	1	1	0	48	0	
	12/ 4/70	345	57	21	6	6	434	79	13	5	1	1	0	42	0	
	12/10/71	316	67	29	9	9	430	73	16	7	2	2	0	36	0	

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Genesee	11/22/67	266	19	19	4	7	315	84	6	6	1	2				
	11/22/68	244	18	28	6	8	304	80	6	9	2	3				
	11/21/69	238	36	40	3	5	322	74	11	12	1	2				
	12/ 4/70	212	33	52	6	1	304	70	11	17	2	0				
	12/10/71	211	73	53	1	4	342	62	21	15	0	1				
Gier Park	11/22/67	323	7	26	0	0	356	91	2	7	0	0				
	11/22/68	312	9	28	0	0	349	89	3	8	0	0				
	11/21/69	342	38	67	2	0	449	76	8	15	0	0				
	12/ 4/70	462	40	63	2	0	567	81	7	11	0	0				
	12/10/71	434	40	58	2	0	534	81	7	11	0	0				
Grand River	11/22/67	344	64	101	2	2	513	67	12	20	0	0				
	11/22/68	346	52	83	5	2	488	71	11	17	1	0				
	11/21/69	326	59	101	3	3	492	66	12	21	1	1				
	12/ 4/70	302	53	129	2	1	487	62	11	26	0	0				
	12/10/71	292	51	117	8	1	469	62	11	25	2	0				
Gunnisonville	11/22/67	321	7	9	0	0	337	95	2	3	0	0				
	11/22/68	341	3	9	1	2	356	96	1	3	0	0				
	11/21/69	373	3	4	0	2	382	98	1	1	0	1				
	12/ 4/70	347	2	6	0	2	357	97	1	2	0	1				
	12/10/71	309	4	2	0	0	315	98	1	1	0	0				

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Harley Franks	11/22/67	198	2	16	0	1	217	91	1	7	0	0				
	11/22/68	174	0	33	0	0	207	84	0	16	0	0				
	11/21/69	187	1	23	0	0	211	89	0	11	0	0				
	12/ 4/70	232	83	27	2	0	344	67	24	8	1	0				
	12/10/71	269	82	26	2	1	380	71	22	7	1	0				
High	11/22/67	262	21	82	2	0	367	71	6	22	0	0				
	11/22/68	237	17	82	3	0	339	70	5	24	1	0				
	11/21/69	225	34	90	4	0	353	64	10	25	1	0				
	12/ 4/70	244	32	92	1	0	369	66	9	25	0	0				
	12/10/71	227	30	92	1	0	350	65	9	26	0	0				
Holmes	11/22/67	331	48	9	6	5	399	83	12	2	2	1				
	11/22/68	310	90	29	6	5	440	71	20	7	1	1				
	11/21/69	299	158	42	4	8	511	59	31	8	1	2				
	12/ 4/70	237	159	33	5	12	446	53	36	7	1	3				
	12/10/71	229	135	34	6	5	409	56	33	8	1	1				
Horsebrook	11/22/67	233	0	0	0	0	233	100	0	0	0	0				
	11/22/68	227	0	0	0	1	228	100	0	0	0	0				
	11/21/69	239	1	1	0	1	242	99	0	0	0	0				
	12/ 4/70	198	5	2	0	1	206	96	2	1	0	0				
	12/10/71	196	5	3	0	0	204	96	2	1	0	0				

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Hurd	11/22/67	105	0	0	0	0	105	100	0	0	0	0				
	11/22/68	127	0	0	0	0	127	100	0	0	0	0				
	11/21/69	106	0	0	0	0	106	100	0	0	0	0				
	12/ 4/70	School closed.														
Kalamazoo	11/22/67	43	353	27	0	0	423	10	83	6	0	0				
	11/22/68	20	171	20	0	0	211	9	81	9	0	0				
	11/21/69	36	158	18	2	2	216	17	73	8	1	1				
	12/ 4/70	School closed.														
Kendon	11/22/67	351	40	5	0	0	396	89	10	1	0	0	20	40	0	0
	11/22/68	322	25	6	0	0	353	91	7	2	0	0	0	20	0	0
	11/21/69	316	26	9	0	0	351	90	7	3	0	0	0	24	0	0
	12/ 4/70	332	27	10	1	1	371	89	7	3	0	0	0	22	1	0
	12/10/71	338	30	6	0	2	376	90	8	2	0	1	6	29	0	0
Lewton	11/22/67	414	2	0	0	1	417	99	0	0	0	0				
	11/22/68	401	2	1	0	0	404	99	0	0	0	0				
	11/21/69	384	2	0	0	0	386	99	1	0	0	0				
	12/ 4/70	398	55	19	0	0	472	84	12	4	0	0	11	39	13	0
	12/10/71	399	30	8	2	0	439	91	7	2	0	0	20	20	7	2

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Lincoln—	11/22/67	39	3	0	0	0	42	93	7	0	0	0				
Special Education	11/22/68	36	10	1	0	0	47	76	21	2	0	0				
	11/21/69	42	13	0	0	0	55	76	24	0	0	0				
	12/ 4/70	30	17	2	0	1	50	60	34	4	0	2				
	12/10/71	62	26	5	0	0	93	67	28	5	0	0				
Lyons	11/22/67	263	0	0	0	0	263	100	0	0	0	0				
	11/22/68	272	0	0	0	0	272	100	0	0	0	0				
	11/21/69	278	1	4	0	1	284	98	0	1	0	0				
	12/ 4/70	292	35	7	0	0	334	87	10	2	0	0	1	26	0	0
	12/10/71	274	32	9	3	0	318	86	10	3	1	0	1	16	4	0
Main	11/22/67	8	304	0	0	0	312	3	97	0	0	0				
	11/22/68	7	267	0	0	0	274	3	97	0	0	0				
	11/21/69	35	251	0	0	8	294	12	85	0	0	3	14	0	0	0
	12/ 4/70	27	285	0	0	10	322	8	89	0	0	3	9	0	0	0
	12/10/71	34	255	2	0	10	301	11	85	1	0	3	13	1	0	0
Maple Grove	11/22/67	368	13	13	0	0	394	93	3	3	0	0				
	11/22/68	398	12	9	0	0	419	95	3	2	0	0	17	8	3	0
	11/21/69	408	6	11	0	1	426	96	1	3	0	0				
	12/ 4/70	471	9	12	0	2	494	95	2	2	0	0				
	12/10/71	468	22	26	0	7	523	89	4	5	0	1				

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Maple Hill	11/22/67	263	2	1	0	0	266	99	1	0	0	0				
	11/22/68	237	23	7	0	0	267	89	9	3	0	0	1	22	6	0
	11/21/69	246	37	10	0	2	295	83	13	3	0	1	0	37	7	0
	12/ 4/70	222	33	10	0	0	265	84	12	4	0	0	0	33	5	0
	12/10/71	196	34	4	1	0	235	83	14	2	0	0	0	29	0	0
Maplewood	11/22/67	395	2	18	4	2	421	94	0	4	1	0				
	11/22/68	382	3	18	5	6	414	92	1	4	1	1				
	11/21/69	365	5	15	3	9	397	92	1	4	1	2				
	12/ 4/70	328	9	27	3	12	379	87	2	7	1	3				
	12/10/71	306	9	37	2	13	367	83	2	10	1	4				
Michigan	11/22/67	44	277	13	7	0	341	13	81	4	2	0				
	11/22/68	51	269	13	0	0	333	15	81	4	0	0				
	11/21/69	31	269	23	0	0	323	10	83	7	0	0				
	12/ 4/70	27	249	26	0	0	302	9	82	9	0	0				
	12/10/71	32	260	32	0	0	324	10	80	10	0	0				
Moores Park	11/22/67	351	8	28	1	0	388	90	2	7	0	0				
	11/22/68	334	13	55	11	0	413	81	3	13	3	0				
	11/21/69	347	16	61	6	0	430	81	4	14	1	0				
	12/ 4/70	219	22	32	16	3	292	75	8	11	5	1				
	12/10/71	204	34	49	15	1	303	67	11	16	5	0				

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Mt. Hope	11/22/67	376	31	20	0	5	432	87	7	5	0	1	30	27	20	0
	11/22/68	418	20	14	0	6	458	91	4	3	0	1	0	14	0	0
	11/21/69	416	3	15	0	3	437	95	1	3	0	1				
	12/ 4/70	442	9	14	1	1	467	95	2	3	0	0				
	12/10/71	405	5	12	1	0	423	96	1	3	0	0				
North	11/22/67	518	2	8	0	1	529	98	0	2	0	0				
	11/22/68	497	3	9	0	0	509	98	1	2	0	0				
	11/21/69	502	3	6	0	1	512	98	1	1	0	0				
	12/ 4/70	486	4	11	0	0	501	97	1	2	0	0				
	12/10/71	481	12	18	0	0	511	94	2	4	0	0				
Northwestern	11/22/67	331	0	2	0	3	336	99	0	1	0	1	33	0	0	0
	11/22/68	297	0	5	1	3	306	97	0	2	0	1	26	0	0	0
	11/21/69	280	0	2	0	0	282	99	0	1	0	0				
	12/ 4/70	332	31	16	0	0	379	88	8	4	0	0				
	12/10/71	290	20	27	0	0	337	86	6	8	0	0				
Oak Park	11/22/67	195	8	34	0	1	238	82	3	14	0	0				
	11/22/68	181	6	57	2	2	248	73	2	24	1	1	34	2	16	2
	11/21/69	153	7	52	1	1	214	71	3	24	0	0	19	1	19	0
	12/ 4/70	127	9	53	2	0	191	66	5	28	1	0	19	4	17	0
	12/10/71	122	14	61	2	0	199	61	7	31	1	0	17	1	16	0

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Pleasant Grove	11/22/67	510	33	14	2	0	559	91	6	3	0	0				
	11/22/68	467	40	10	0	4	521	90	8	2	0	1				
	11/21/69	490	36	15	0	2	543	90	7	3	0	0				
	12/ 4/70	497	55	16	0	0	568	88	10	3	0	0				
	12/10/71	449	54	20	0	0	523	86	10	4	0	0				
Pleasant View	11/22/67	413	31	16	3	0	463	89	7	3	1	0	0	21	3	0
	11/22/68	541	88	36	0	2	667	81	13	5	0	0				
	11/21/69	513	96	47	3	3	662	77	15	7	0	0				
	12/ 4/70	483	108	62	3	4	660	73	16	9	0	1				
	12/10/71	431	118	70	5	2	626	69	19	11	1	0				
Post Oak	11/22/67	438	11	9	0	0	458	96	2	2	0	0				
	11/22/68	492	12	9	0	2	515	96	2	2	0	0				
	11/21/69	507	16	8	0	7	538	94	3	1	0	1				
	12/ 4/70	466	11	4	0	9	490	95	2	1	0	2				
	12/10/71	454	11	6	3	8	482	94	2	1	1	2				
Reo	11/22/67	410	6	10	0	0	426	96	1	2	0	0				
	11/22/68	330	18	14	0	0	362	91	5	4	0	0				
	11/21/69	341	34	35	0	0	410	83	8	9	0	0				
	12/ 4/70	295	39	29	0	0	363	81	11	8	0	0				
	12/10/71	306	37	27	0	0	370	83	10	7	0	0				

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Sheridan Road	11/22/67	466	12	23	0	0	501	93	2	5	0	0	18	0	0	0
	11/22/68	483	12	28	1	1	525	92	2	5	0	0	22	12	7	0
	11/21/69	508	10	18	6	2	544	93	2	3	1	0	8	3	3	0
	12/ 4/70	442	33	26	6	0	507	87	7	5	1	0	3	26	13	0
	12/10/71	444	29	49	4	0	526	84	6	9	1	0	19	18	17	0
Valley Farms	11/22/67	337	1	0	0	0	338	100	0	0	0	0				
	11/22/68	346	2	0	0	0	348	99	1	0	0	0				
	11/21/69	310	0	6	0	0	316	98	0	2	0	0				
	12/ 4/70	302	2	9	0	2	315	96	1	3	0	1				
	12/10/71	273	0	4	0	2	279	98	0	1	0	1				
Verlinden	11/22/67	276	46	7	0	0	329	84	14	2	0	0				
	11/22/68	270	79	11	0	0	360	75	22	3	0	0				
	11/21/69	235	70	15	0	1	321	73	22	5	0	0				
	12/ 4/70	234	94	24	0	1	353	66	27	7	0	0				
	12/10/71	255	88	34	0	1	378	67	23	9	0	0				
Wainwright	11/22/67	810	51	9	2	6	878	92	6	1	0	1				
	11/22/68	695	106	18	0	4	823	84	13	2	0	0	0	40	4	0
	11/21/69	634	113	20	1	13	781	81	14	3	0	2	0	26	4	0
	12/ 4/70	577	95	14	1	15	702	82	14	2	0	2				
	12/10/71	563	104	19	1	18	705	80	15	3	0	3				

School	Date of Report	Students						Enrollment Percentages					Transported Students			
		C	N	S	I	O	Total	C	N	S	I	O	C	N	S	O
Walnut	11/22/67	363	94	30	1	3	491	74	19	6	1	0	0	87	0	0
	11/22/68	325	89	30	2	0	446	73	20	7	0	0	0	73	0	0
	11/21/69	324	92	41	3	1	461	70	20	9	1	0	0	59	0	0
	12/ 4/70	329	68	50	0	1	448	73	15	11	0	0	0	60	0	0
	12/10/71	298	83	62	1	1	445	67	19	14	0	0	3	52	0	0
Wexford	11/22/68	215	36	14	0	0	265	81	14	5	0	0	3	27	0	0
	11/21/69	234	57	10	0	0	301	78	19	3	0	0	0	27	0	0
	12/ 4/70	257	91	15	1	3	367	70	25	4	0	0	0	33	0	0
	12/10/71	261	96	17	0	3	377	69	25	5	0	1	0	20	0	0
Willow	11/22/67	414	132	15	0	2	563	74	23	3	0	0				
	11/22/68	375	174	23	0	2	574	65	30	4	0	0				
	11/21/69	391	176	19	0	0	586	67	30	3	0	0				
	12/ 4/70	331	171	26	0	0	528	63	32	5	0	0				
	12/10/71	324	188	42	2	3	559	58	34	8	0	1				
Woodcreek	11/22/68	187	42	6	0	3	238	79	18	3	0	1	13	28	0	3
	11/21/69	196	49	8	0	1	254	77	19	3	0	0	0	26	0	0
	12/ 4/70	220	52	19	0	2	293	75	18	6	0	1	0	30	0	0
	12/10/71	258	49	21	3	1	332	78	15	6	1	0	0	27	0	0

The "Transported Students" are pupils bused to the school from outside the neighborhood attendance area. These data do not include students in special classes who are transported by taxi.

ETHNIC COUNT REPORT
SEPTEMBER 26, 1975

Elementary Schools	Students						Families						Enrollment Percentages #					Transported Students +			
	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Total	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Total	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Caucasian	Black	Span. Surnm	Other
Allen Street	177	82	51	00	08	318	170	77	49	00	7	303	56	26	16	00	03				
Attwood	421	79	33	5	7	545	415	75	31	4	7	532	77	14	06	01	01	0	18	0	0
Averill	357	65	34	1	0	457	347	62	32	1	0	442	78	14	07	00	00				
Barnes	221	41	16	1	2	281	220	41	16	1	2	280	79	15	06	00	01	23	15	6	0
Bingham	194	29	44	13	6	286	188	27	44	13	6	278	68	10	15	05	02				
Cavanaugh	232	79	14	1	2	328	229	77	13	1	2	322	71	24	04	00	01	47	60	5	0
Cedar	62	5	54	4	0	125	59	5	49	4	0	117	50	04	43	03	00	25	0	2	0
Cumberland	220	93	16	1	4	334	215	88	13	1	4	321	66	28	05	00	01				
Elmhurst	399	74	28	5	3	509	390	71	27	5	3	496	78	15	06	01	01	88	50	13	1
Everett	283	55	23	0	3	364	278	54	21	0	3	356	78	15	06	00	01	51	40	1	2
Fairview	278	25	10	0	4	317	272	25	10	0	4	311	88	08	03	00	01	0	13	0	0
Forest Road	143	40	11	1	1	196	141	40	11	1	1	194	73	20	06	01	01	0	14	0	0
Forest View	160	51	15	1	2	229	154	51	13	1	2	221	70	22	07	00	01	0	27	0	0

Percentages given to the nearest whole per cent

+ Pupils bused to this school from other school attendance areas.

Elementary Schools	Students						Families						Enrollment Percentages #					Transported Students +			
	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Total	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Total	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Caucasian	Black	Span. Surnm	Other
Foster	272	42	28	4	8	354	260	39	28	4	6	337	77	12	08	01	02	0	25	0	0
Genesee	167	90	49	15	4	325	160	88	47	15	4	314	51	28	15	05	01				
Gier Park	329	68	76	4	1	478	319	65	72	4	1	461	69	14	16	01	00	63	0	3	0
Grand River	205	57	136	13	4	415	199	50	127	13	4	393	49	14	33	03	01	33	5	31	3
Gunnisonville	256	2	7	2	0	267	250	2	6	2	0	260	96	01	03	01	00				
Harley Franks	195	93	34	5	1	328	184	89	30	4	1	308	57	28	10	02	00				
High	212	22	74	3	0	311	207	21	73	3	0	304	68	07	24	01	00	65	4	5	0
Holmes	160	125	62	0	6	353	157	115	57	0	6	335	45	35	18	00	02				
Horsebrook	151	8	0	4	0	163	147	8	0	4	0	159	93	05	00	02	00				
Kendon	305	19	20	0	0	344	293	18	19	0	0	330	89	06	06	00	00	0	9	0	0
Lewton	244	51	7	1	5	308	243	51	7	1	5	307	79	17	02	00	02	72	40	3	1
Lyons	228	50	13	0	2	293	222	45	13	0	2	282	78	17	04	00	01	0	33	2	2
Main	81	144	11	0	8	244	78	141	9	0	7	235	33	59	05	00	03	45	7	0	2

Percentages given to the nearest whole per cent

+ Pupils bused to this school from other school attendance areas.

Elementary Schools	Students						Families						Enrollment Percentages #					Transported Students +			
	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Total	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Total	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Caucasian	Black	Span. Surnm	Other
Maple Grove	416	54	22	7	14	513	409	54	22	7	12	504	81	11	04	01	03				
Maple Hill	133	26	8	0	2	169	132	25	6	0	2	165	79	15	05	00	01	21	18	4	0
Maplewood	260	26	46	1	10	343	250	25	44	1	10	330	76	08	13	00	03				
Michigan	71	116	5	1	4	197	66	114	5	1	3	189	36	59	03	01	02	62	3	0	3
Moores Park	156	43	57	6	1	263	151	39	52	6	1	249	59	16	22	02	00				
Mount Hope	353	20	18	4	2	397	339	19	18	4	2	382	89	05	05	01	01				
North	499	48	32	2	7	588	476	44	29	2	6	557	85	08	05	00	01				
Northwestern	243	54	45	1	2	345	228	50	42	1	2	323	70	16	13	00	01				
Oak Park	121	18	56	9	6	210	118	17	52	9	5	201	58	09	27	04	03	48	9	24	6
Pleasant Grove	325	63	16	3	3	410	308	57	16	3	3	387	79	15	04	01	01				
Pleasant View	362	147	79	5	7	600	351	140	76	5	7	579	60	25	13	01	01				
Post Oak	333	9	32	2	8	384	322	9	29	2	8	370	87	02	08	01	02	57	5	31	1

Percentages given to the nearest whole per cent

+ Pupils bused to this school from other school attendance areas.

Elementary Schools	Students						Families						Enrollment Percentages #						Transported Students +			
	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Total	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Total	Caucasian	Black	Span. Surnm	Amer. Ind.	Other		Caucasian	Black	Span. Surnm	Other
Reo	335	96	15	0	3	449	328	93	15	0	3	489	75	21	03	00	01		82	0	0	0
Sheridan Road	380	27	48	16	4	475	367	23	45	16	4	455	80	06	10	03	01		3	6	6	0
Valley Farms	207	2	8	0	0	217	199	2	8	0	0	209	95	01	04	00	00					
Verlinden	188	80	37	1	6	312	181	78	34	1	5	299	60	26	12	00	02					
Wainwright	395	140	26	1	14	576	386	137	25	1	14	563	69	24	05	00	02					
Walnut	256	99	52	5	2	414	248	93	48	5	2	396	62	24	13	01	00		0	43	0	0
Wexford	279	97	40	4	4	424	269	94	36	4	4	407	66	23	09	01	01		67	4	13	0
Willow	274	165	52	3	0	444	265	161	49	3	0	478	55	33	11	01	00					
Woodcreek	370	132	37	0	5	544	356	128	34	0	4	522	68	24	07	00	01		0	25	0	0
Elementary Totals	11908	2951	1597	155	185	16796	11546	2827	1502	153	174	16202	71	18	10	01	01					

= Percentages given to the nearest whole per cent

+ Pupils bused to this school from other school attendance areas.

Beckman Center	138	19	8	0	1	166	137	19	8	0	1	165	83	11	05	00	01					
Lincoln Center—Spec. Ed.																						

Elementary Schools	Students						Enrollment Percentages #				
	Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Total	Caucasian	Black	Span. Surnm	Amer. Ind.	Other
Supplemental Data											
CLUSTER I											
Barnes	221	41	16	1	2	287	79	15	06	00	01
Elmhurst	399	74	28	5	3	509	78	15	06	01	01
Lewton	244	51	7	1	5	308	29	17	02	00	02
Main	81	144	11	0	8	244	33	59	05	00	03
Cluster I Totals	945	310	62	7	18	1342	70	23	05	01	01
CLUSTER II											
Cavanaugh	232	79	14	1	2	325	71	24	04	00	01
Everett	283	55	23	0	3	364	78	15	06	00	01
Maple Hill	133	26	8	0	2	169	79	15	05	00	01
Michigan	71	116	5	1	4	197	36	57	03	01	02
Cluster II Totals	719	276	50	2	11	1058	68	26	05	00	01

Percentages given to the nearest whole per cent

Elementary Schools	Students: Caucasian	Black	Span. Surnm	Amer. Ind.	Other	Total	Enrollment Percentages #: Caucasian	Black	Span. Surnm	Amer. Ind.	Other
Supplemental Data (Cont'd)											
CLUSTER III											
Cedar	62	5	54	4	0	125	50	04	43	03	00
Grand River	205	57	136	13	4	415	49	14	33	03	01
High	212	22	74	3	0	311	68	07	24	01	00
Oak Park	121	18	56	9	6	210	58	09	27	04	03
Post Oak	333	9	32	2	8	384	87	02	08	01	02
Cluster III Totals	933	111	352	31	18	1445	65	08	24	02	01

Percentages given to the nearest whole per cent

ETHNIC COUNT WITHOUT CLUSTERS OR ONE WAY BUSING

Based on Fourth Friday 1975-76	Number Caucasian	Percent Caucasian	Number Black	Percent Black	Number Spanish	Percent Spanish	Number American Indian	Percent American Indian	Number Other	Percent Other	Total
Allen	176	56	82	26	51	16	0	0	8	3	317
Attwood	422	80	59	11	33	6	5	1	7	1	526
Averill, F.	356	78	64	14	35	7	1	0	0	0	456
Barnes	266	86	28	9	16	5	0	0	0	0	310
Beekman, M. (Sp. Ed.)	—	—	—	—	—	—	—	—	—	—	—
Bingham	196	68	30	10	45	16	13	4	6	1	290
Cavanaugh	300	91	17	5	13	4	0	0	0	0	330
Cedar	56	43	8	6	66	51	0	0	0	0	130
Cumberland	220	66	93	28	16	5	1	0	4	1	334
Elmhurst	492	91	32	6	11	2	0	0	5	1	540
Everett	302	90	16	5	17	5	0	0	0	0	335
Fairview	278	92	12	4	10	3	0	0	4	1	304
Forest Road	141	78	27	15	10	6	1	0	1	0	180
Forest View	160	79	23	11	15	8	2	1	2	1	202
Foster	271	83	17	5	28	9	4	1	8	2	328
Franks, H.	195	59	93	28	34	10	5	2	1	0	328
Genesee	166	51	90	28	49	15	15	5	4	1	324

	Number Caucasian	Percent Caucasian	Number Black	Percent Black	Number Spanish	Percent Spanish	Number American Indian	Percent American Indian	Number Other	Percent Other	Total
Gier Park	329	69	68	14	76	16	4	1	1	0	478
Grand River	262	57	14	3	184	40	0	0	0	0	460
Gunnisonville	254	95	2	1	7	3	4	1	0	0	267
High	170	57	7	2	123	41	0	0	0	0	300
Holmes	160	45	126	36	61	17	0	0	6	2	353
Horsebrook	151	93	8	5	0	0	4	2	0	0	163
*Kalamazoo	4	1	250	93	15	6	0	0	0	0	269
Kendon	303	91	10	3	20	6	0	0	0	0	333
Lewton	212	97	5	2	0	0	0	0	3	1	220
*Lincoln	0	0	12	100	0	0	0	0	0	0	12
Lyons	229	89	17	7	11	4	0	0	0	0	257
Main	51	20	201	79	3	1	0	0	0	0	255
Maple Grove	414	81	54	11	22	4	7	1	14	3	511
Maple Hill	185	95	4	2	6	3	0	0	0	0	195
Maplewood	260	76	26	8	46	13	1	0	10	3	343
*Michigan	41	17	186	78	13	5	0	0	0	0	240
Moores Park	156	59	43	16	57	22	6	2	1	0	263
Mount Hope	353	89	20	5	18	5	4	1	2	1	397
North	500	85	47	8	32	5	2	0	7	1	588

	Number Caucasian	Percent Caucasian	Number Black	Percent Black	Number Spanish	Percent Spanish	Number American Indian	Percent American Indian	Number Other	Percent Other	Total
Northwestern	244	71	56	16	43	12	1	0	2	1	346
Oak Park	97	67	3	2	45	31	0	0	0	0	145
Pleasant Grove	324	79	63	15	16	4	3	1	3	1	409
Pleasant View	363	60	148	25	79	13	5	1	7	1	602
Post Oak	368	98	4	1	3	1	0	0	0	0	375
Reo	335	74	100	22	15	3	0	0	3	1	453
Sheridan Road	377	82	21	5	42	10	16	3	4	1	460
Valley Farms	207	95	2	1	8	4	0	0	0	0	217
Verlinden	187	60	80	26	37	12	1	0	6	2	311
Wainwright	395	68	141	24	26	5	1	0	14	2	577
Sub-Total											
Walnut	258	68	62	16	52	14	5	1	2	0	378
Wexford	279	66	96	23	40	9	4	1	4	1	423
Willow	274	56	158	33	51	10	3	1	0	0	486
Woodcreek	371	71	107	21	37	7	0	0	5	1	520
Grand Total	45	8	501	87	28	5	0	0	0	0	574

*Riddle

*Kalamazoo, Lincoln, and Michigan combine to form Riddle The attached projected ethnic count is based on the 1975-76 Fourth Friday count and projects the ethnic balance of each elementary school if the clusters and all one way busing were eliminated. While this projection is based on the Fourth Friday count there may be some disparity with it due to some assumptions made in placing children in their "home" school:

1. Kalamazoo and Lincoln schools were recreated on paper to give a truer picture of the River Island area.
2. The enrollments of Kalamazoo, Lincoln, and Michigan only were combined to form the enrollment for Riddle.
3. Special Education students were counted in those buildings where they are now enrolled regardless of where they live.
4. In reconstructing those schools currently in a Cluster, it was assumed that their K-6 ethnic composition would approximate their current K-2 enrollment.

While these assumptions do affect the figures somewhat, the disparity is so slight as to be insignificant.

Pupil Personnel
12-9-75

Attwood

EXCERPTS FROM FOREWORD OF THE 1972 CITIZENS' ADVISORY COMMITTEE ON EDUCATIONAL OPPORTUNITY REPORT

Foreword

The Citizens' Advisory Committee on Educational Opportunity was appointed by the Lansing Board of Education to develop recommendations which, in the Committee's best judgment, would enhance the opportunity of every child not only to receive all available educational services appropriate to his needs and his learning development but also to insure that the setting of that educational experience is representative of the pluralistic, multi-ethnic society in which all of us must function as adults.

• • • • • • • •

In formulating its recommendations, the Committee has reviewed the several hundred letters received from concerned citizens, has considered the continuous flow of personal discussion and phone calls from parents and others, and has given careful attention to the results of the several surveys conducted by various groups. Perhaps the most frequent theme in these communications has been: we believe in integration, but we don't want busing. Other suggestions and comments were as follows:

• • • • • • • •

Recommendations

Five years have passed since the last citizens' study of equal opportunity in Lansing's public schools. We admire their diligence, their fortitude in attacking such an enormous problem.

The committee's report is complete, it is testimony to its efficacy that most of its recommendations have been put into effect.

In spite of all previous recommendations, and in spite of efforts on the part of educators and the Board of Education, 29 of Lansing's 48 elementary schools are **still segregated,** in terms of government requirements.

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EXCERPT FROM NAACP DOCUMENT

Main Street School

The Main Street School P. T. A. Executive Board was requested to make an immediate decision during a hastily called meeting concerning whether or not mobile units were to be added to the Main Street School campus to relieve overcrowding as opposed to an alternate plan of transporting students to nearby elementary schools with available space. When some of the disadvantages of transporting "small" children to other schools was discussed, the Board was persuaded to add mobile units.

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EXCERPTS FROM 1965 CITIZENS' ADVISORY COMMITTEE REPORT

Kalamazoo Street School

Observations

1. Enrollment: 557 (10/1/65)
2. Site: The Kalamazoo Street School shares a 3.7-acre site with West Junior High School. This site is entirely inadequate and does not provide the necessary outdoor space for physical education and recreation programs. Parking for staff is also a serious problem with Kalamazoo and West faculties sharing a lot on the southeast corner of Lenawee and Chestnut.

3. Location: The Kalamazoo Street School is located close to a very busy street in a downtown location. Property to the north is being acquired by the State of Michigan and apartment and commercial developments are springing up to the east, south, and west. Most of the students attending Kalamazoo come from the west, with very few coming from the area east of the school.
4. Physical Structure: Constructed in 1924, the building is a three-story structure which causes some difficulty in pupil movement within the building. Recommended improvements in the 1963 Facilities Modernization Program will be costly, approximately $150,000. This does not include funds for the purchase of additional site, one of the most critical requirements.
5. De Facto Segregation: Kalamazoo Street School is predominantly a Negro elementary school because of the housing pattern in the area which it serves. There were 442 Negro children of a total of 557 as of April 1, 1966. There is an extremely high level of mobility, and the economic level of the area is among the lowest in the city. This results in some special problems at Kalamazoo, due to the background of the pupils which the school serves.

Recommendations

1. That this facility be phased out as a K-6 facility at the earliest date possible with no major expenditures made on the physical plant.
2. That students in the present attendance area be bussed to outlying schools which serve predominantly white attendance areas.

Until such time as items 1 and 2 can be accomplished:

3. That a low pupil-teacher ratio be maintained.

4. That emphasis on the Head Start program be continued.
5. That the hours of usage for the library and recreational facilities be lengthened.
6. That shared experiences with predominantly white schools be increased.

Lincoln Elementary School

A series of events has occurred since the organization of this committee which have resulted in the closing of Lincoln as an elementary school. These events, in sequence, are:

1. The Human Relations Team recommended the closing of Lincoln as an elementary school to the Superintendent of Schools (May 12, 1965, Appendix E).

2. The Superintendent presented a proposal to the Board of Education which called for the closing of Lincoln as an elementary school and the transportation of the children from the attendance area to other schools (June 11, 1965, Appendix G).

3. The Superintendent's proposal was endorsed by the Citizens' Advisory Committee (June 28, 1965, Appendix H).

4. On July 22, 1965, the Board of Education acted favorably on this proposal.

5. Since September, 1965, the children from the Lincoln area have attended Kendon, Mt. Hope, and Reo (Appendix R, 1).

6. The Lincoln School is currently being used as a center for 56 emotionally disturbed elementary children. This program had been proposed for several years but had not been implemented because a building had not been available.

The Citizens' Advisory Committee is in accord with the action taken by the Superintendent and the Board of Education in closing Lincoln as an elementary school and commends their positive approach to a difficult problem.

Main Street School

Observations

1. Enrollment: 371 (10/1/65)

2. Site: The Main Street School is located on a 2.38-acre site. While the site is rather small, the building location leaves adequate space for physical education and recreation. The playground is heavily used as there are no parks in the immediate area.

3. Location: The school is well located for the attendance area which it serves. The attendance area will soon be bisected by I-496, but completion of the highway will result in a safer situation for children walking to school. Heavy traffic will be depressed below grade level, while access across I-496 will be at grade level. The Lansing Planning Department indicates that most of the area between the proposed I-496 and the Grand River will become industrial, possibly within ten years.

4. Physical Structure: The original two-story structure was constructed in 1929 with a single-story addition in 1954. The building is structurally sound, has recently had new lighting and acoustical ceiling tile installed, and toilet facilities have been improved. The library is being used half-time as a kindergarten. The desired instructional program can be conducted in this building.

5. De Facto Segregation: The enrollment at Main is predominantly Negro because of the housing pattern in the attendance area which the school serves. As of April 1, 1966, 319 of the 371 pupils were Negro.

Michigan Avenue School

Observations

1. Enrollment: 390 (10/1/65)

2. Site: The school is located on a site of 1.34 acres. The building itself is very close to Logan Street. These factors make the site inadequate.

3. Location: Noise, fumes, and dirt from heavily-traveled Logan Street are literally on the windowsills of the school. Plans to pair Butler with Logan will place Michigan Avenue School between one-way pairs. The Capitol Development Area is located just two blocks east of the school, and new multi-story apartments are being proposed and developed in the eastern portion of the attendance area.

4. Physical Structure: The building was constructed in 1916 and even with the completion of the Facilities Modernization Program of 1963 would not meet desired standards.

5. De Facto Segregation: The enrollment of the school is predominantly Negro because of the residential housing pattern. As of April 1, 1966, 278 of 390 pupils were Negro. (An additional 81 Negro children from this area attend Elmhurst and Fairview.) The residential area north of the school is gradually changing from white to Negro.

Recommendations

1. That this building be phased out as a K-6 facility as soon as possible with no major expenditures made on the physical plant.

EXCERPT FROM PROCEEDINGS ON PROPOSED STIPULATIONS

The Court: There is before the Court, and we discussed this in chambers, the record **[25]** of the preceding cases which are incorporated as a part of this case, the record of the original case that came up to this Court by removal from the State Court of the action which sought to enjoin the previous School Board

from implementing the cluster plan or executing the cluster plan, in this Court—or, the State Court had enjoined the School Board from doing so, and this Court set aside that injunction. So that the cluster plan was actually implemented and operative, and that it is operating today, and that the resolution of the 11th of January—or, of the first of February, 1973, rescinded that plan effective on June 30th of this year. So the plan is presently in being, and the resolution to rescind is anticipatory in a future condition. The condition that is to take effect, if the resolution is sustained, is on the 30th of June, is that correct?

* * * * * * *

EXCERPTS FROM REPORT TO LANSING BOARD OF EDUCATION RELATING TO IMPACT OF THE CLUSTER PROGRAM ON READING AND MATH SCORES

A report entitled, *A Report to the Lansing School District Board of Education* in August, 1975 relating to the impact of the cluster program on reading and math scores of the students involved made the following findings:

Finding 1—The gap between minority and majority reading achievement levels grew rather than narrowed for cohort groups 2 and 3. This finding is not as strong for math.

Finding 2—For cohort groups 4 and 5, the findings are mixed. The gap between minority and majority achievement levels grows in some cases and exhibits a slight leveling in the rate of increase in other cases.

Finding 3—For reading, there is evidence of a definite slowing in the rate of increase of the achievement gap between blacks and whites in Cluster schools for cohort groups 6 and 7 up to the end of sixth grade and in match for cohort 7. There is slightly less support for this finding for Spanish-Surnamed students.

Finding 4—Majority students within the Cluster Program tend to start at or above national norm achievement levels and to remain at or above the norm.

Finding 5—The gap between minority and majority achievement levels increases slightly less for math than for reading between blacks and whites and between Spanish-Surnamed students and whites.

Finding 6—The gap between minority and majority achievement levels widens again for blacks coming from the Cluster as they enter junior high school. This does not occur for Spanish-Surnamed students.

Finding 7—Being bused does not in itself appear to have any consistent effect on achievement scores.

Finding 8—There is some evidence of a drop in achievement levels when students change school (third and fifth grades). There is generally an increase the next years (fourth and sixth grades). This occurs whether or not the student is bused or is returning to the school he attended in kindergarten to second grade. However, scores are slightly depressed and elevated for the same grade levels outside the Cluster.

Finding 9—The difference between minority and majority achievement levels within the four types of school settings appears to grow for cohort groups 2, 3, and 6 for reading and math, growing slightly more rapidly in the Cluster and non-Cluster desegregated settings.

Finding 10—The difference between minority and majority achievement levels within the four types of school settings appears to level off and in some cases decrease for cohort groups 4, 5 and 7 in reading and math.

Finding 11—The difference between minority and majority students grade equivalent scores is less in Cluster schools than

in segregated settings when minority achievement levels in predominantly minority schools are compared to majority achievement levels in predominantly majority schools.

Finding 12—Since the establishment of the Cluster Program, students leaving the schools involved have generally been lower achievers in both reading and math than those who have stayed in the Cluster schools.

Finding 13—Students leaving the Cluster have generally the same achievement characteristics as those students leaving non-Cluster schools.

Finding 14—The year before the Cluster was established, students who left the Cluster schools had achievement levels slightly higher than those remaining after that year. This is true more for reading than for math. For cohort, 6. this amounted to 54 students and for cohort 7, it was for 56 students.

Finding 15—Students moving into the Cluster Schools at the sixth grade level had low achievement levels while those moving into the Cluster schools attendance areas at the seventh grade levels had high achievement levels. These findings hold more for reading than for math.

EXTRACT FROM REPORT TO HUMAN RELATIONS COMMITTEE

I. Minority Groups (Elementary and Secondary) June, 1964
Summary by Schools and Groups—Questionnaire, pp. 3-4

School and Enrollment	Groups				
School	Total Building Enrollment May, 1964	Mexican Children Enrolled	Negro Children Enrolled	Oriental Children Enrolled	American Indian Children Enrolled	Total for 4 Minority Groups
School and Enrollment		**Groups**				
Allen	516	76	66	1	6	149
Barnes	409	3	17	0	0	20
Bingham	382	9	1	0	4	14
Cavanaugh	580	5	0	0	4	9
Cedar	224	81	0	0	4	35
Christiancy	249	18	0	0	0	18
Community	97	1	0	0	0	1
Cumberland	287	0	0	0	0	0
Elmhurst	600	0	0	0	0	0
Everett	602	15	0	0	0	15
Fairview	504	0	0	1	0	1
Forest	419	20	17	0	2	39
Foster	474	28	5	0	0	33
Genesee	340	7	23	0	0	30
Gier Park	382	25	3	0	0	28
Grand River	476	64	31	0	2	97

School	Total Building Enrollment May, 1964	Mexican Children Enrolled	Negro Children Enrolled	Oriental Children Enrolled	American Indian Children Enrolled	Total for 4 Minority Groups
Elementary						
High	370	94	9	0	0	103
Holmes	480	18	30	0	0	48
Horsebrook	194	0	0	0	0	0
Kalamazoo	558	7	454	0	0	461
Kendon	410	1	0	0	0	1
Lewton	454	0	14	0	0	14
Lincoln	173	0	173	0	0	173
Lyons	308	0	0	0	0	0
Main	448	4	424	0	0	428
Maple Hill	310	2	0	1	0	3
Maplewood	392	4	0	0	0	4
Michigan	373	4	276	0	0	280
Moores Park	450	16	1	0	0	17
Mount Hope	445	0	2	0	0	2
North	803	15	7	7	0	29
Northwestern	324	0	0	2	0	2
Oak Park	286	27	11	3	0	41
Pleasant Grove	637	3	2	0	0	5
Pleasant View	523	22	0	0	0	22
Verlinden	362	4	18	0	0	22
Wainwright	757	3	5	2	0	10

School and Enrollment		Groups				
School	Total Building Enrollment May, 1964	Mexican Children Enrolled	Negro Children Enrolled	Oriental Children Enrolled	American Indian Children Enrolled	Total for 4 Minority Groups
Walnut	482	14	8	1	2	25
Willow	578	16	105	0	1	122
Total	16,658	606	1702	18	25	2351
Secondary						
Eastern	1947	58	35	2	0	95
Everett	1959	9	6	0	0	15
J. W. Sexton	1601	12	247	3	1	263
C. W. Otto	1120	78	41	1	2	122
Pattengill	1295	48	32	2	3	85
Dwight Rich	1147	10	12	1	0	23
Walter French	1241	7	5	2	2	16
West Junior	1207	18	428	0	0	446
Total	11,517	240	806	11	8	1065
Totals	28,175	846	2508	29	33	3416 (12.1%)

LANSING SCHOOL DISTRICT

Negro Enrollment

School	Total Enrollment 4th Friday 1965	Resident Negro Students	Negro Students Transported In	Total Negro Enrollment	% of Negro Students Based on Total Enrollment
Allen	512	69		69	13.4
Attwood	412		15	15	3.6
Averill	429	17	10	27	6.3
Barnes	420	23	1	24	5.7
Bingham	394	3		3	0.8
Cavanaugh	465			—	—
Cedar	215	8		8	3.7
Christiancy	247	5	6	11	4.5
Cumberland	315	3		3	1.0
Elmhurst	491		35	35	7.1
Everett Elem.	572		1	1	0.2
Fairview	450		46	46	10.2
Forest Road	166	3	31	34	20.5
Forest View	246	2	38	40	16.2
Foster	535	22	4	26	4.8
Genesee	331	8	9	17	5.1
Gier Park	393	3	2	5	1.3
Grand River	474	27		27	5.6
Gunnisonville	269			—	—
Harley Franks	213		2	2	0.9
High	371	17		17	4.6
Holmes	469	54		54	11.5
Horsebrook	198			—	—
Hurd	144			—	—

School	Total Enrollment 4th Friday 1965	Resident Negro Students	Negro Students Transported In	Total Negro Enrollment	% of Negro Students Based on Total Enrollment
Kalamazoo	557	442		442	79.3
Kendon	397		22	22	5.5
Lewton	439			—	—
Lyons	290			—	—
Main	371	319		319	86.0
Maple Grove	401			—	—
Maple Hill	249			—	—
Maplewood	402			—	—
Michigan	390	278		278	71.3
Moores Park	382				
Mount Hope	469		37	37	7.9
North	565	3		3	0.5
Northwestern	329			—	—
Oak Park	249	8	3	11	4.4
Pleasant Grove	528	12		12	2.3
Pleasant View	491	9		9	1.8
Post Oak	319		2	2	0.6
Reo	433	3	33	36	8.3
Sheridan Road	478		1	1	0.2
Valley Farms	346			—	—
Verlinden	339	10	15	25	7.4
Wainwright	855	30		30	3.5
Walnut	449		59	59	13.1
Willow	581	103		103	17.7
Elementary Totals	17,882	1,481	372	1,853	

HISTORY OF DEVELOPMENT OF LANSING SCHOOL DISTRICT

The Lansing School District was first organized in 1847 by the merger of three separate districts serving "Upper, Middle, and Lower" towns in what was to become the City of Lansing. During the next century, the City expanded slowly from its original core area until it encompassed, by 1949, approximately 11 square miles. The greatest period of expansion occurred from 1958-65 when all or portions of 12 neighboring school districts annexed to the Lansing School District increasing its size to approximately 50 square miles.

Following is the order of annexations beginning with the year of original district organization:

Area	Year Annexed
A—Original	1847
B—Central City Expansion	1859
C—Regent-Horton-Kipling Area	1916
D—Mt. Hope-Willard Area	1917
E—Jenison-Clare Street Area	1917
F—Francis Park Area	1925
G—East Saginaw-Grand River Area	1925
H—Thomas Street Area	1928
I—Everett Area	1949
J—LaSalle-Kipling Area	1950
K—Colonial Village Area	1950
L—Hopwood-Groesbeck Area	1956
M—Urbandale-East Michigan Area	1957

Area	Year Annexed
N—Horsebrook Area	1958
O—Pleasant Grove Area	1958
P—Northwestern Area	1959
Q—North Area	1961
R—Community Area	1962
S—Bancroft-Kimberly Area	1962
T—Forest Road Area	1963
U—Island Area (partial)	1964
V—Gunnisonville Area	1965
W—Sheridan Road Area	1965
X—Valley Farms Area	1965
Y—Hurd Area	1965
Z—Maple Grove Area (partial)	1965

KALMAZOO ELEMENTARY SCHOOL HISTORY

KALAMAZOO ELEMENTARY SCHOOL

Present building opened in 1924.

Facilities: 2 Kindergarten
19 Regular clossrooms

Capacity Computation: 2 @ 60; 19 @ 30 equals 690

Enrollments		**Ethnic Count** (not Fourth Friday)						
1950-1951	455	**Year**	**C**	**N**	**S**	**I**	**O**	**Total**
1951-1952	453	1967-1968	43	353	27	0	0	423
1952-1953	492	1968-1969	16	173	17	0	0	206
1953-1954	500	1969-1970	33	151	14	0	2	200
1954-1955	529							
1955-1956	531							
1956-1957	551							
1957-1958	557							
1958-1959	568							
1959-1960	559							
1960-1961	552							
1961-1962	551							
1962-1963	559							
1963-1964	578							
1964-1965	605							
1965-1966	556							
1966-1967	414							
1967-1968	414							
1968-1969	204							
1969-1970	200							
1970	Closed							

Change in Building Use—1968 (1 K + 7 R = 260)

Based upon a decision made by the Lansing Board of Education to phase out Kalamazoo Elementary, about half of the students were assigned and bussed to Foster, Maple Hill, Wainwright, Woodcreek, and Wexford Elementary Schools.

The third floor and part of the second floor classrooms were used to house Title I offices, High School Completion Courses, Adult Basic Education Classes, Manpower Development Training classes, Work Incentive programs, and Recreational Support Service Offices. Two of the first floor classrooms were used for Head Start Classes.

In 1970, the entire student body was reassigned to other buildings. The building was then renovated and converted to the Stephen A. Partington Administration Center.

Prepared—December 2, 1975

Edward L. Remick, Director of Research and Planning

LINCOLN SCHOOL CLOSING RESOLUTION

July 22, 1965

USE OF LINCOLN SCHOOL

IT WAS MOVED BY Mr. Walsh and seconded by Mrs. Boucher THAT THE LINCOLN SCHOOL BE DISCONTINUED AS A KINDERGARTEN THROUGH GRADE SIX SCHOOL COMMENCING SEPTEMBER, 1965, AND THAT PUPILS PRESENTLY ENROLLED BE TRANSFERRED TO OTHER SCHOOLS WHERE SPACE IS AVAILABLE; THAT THE LINCOLN SCHOOL BE USED TO HOUSE SPECIAL EDU-

CATION PUPILS; AND THAT THE LINCOLN COMMUNITY CENTER CONTINUE THE USE OF THIS BUILDING AND SITE.

It was noted that the recommendation is in congruence with the position paper of the Superintendent entitled *School Integration and Improvement of Educational Opportunity*.

Mr. Ebersole stated that he felt the Board was moving too rapidly toward the closing of the Lincoln School and that there are many other facets which should be investigated before taking this step.

A lengthy discussion ensued and it was pointed out that this motion involves the phasing out of the K-6 program at Lincoln School but the building will continue to be used for the Lincoln Center activities as well as for housing of the special education program.

A concern was expressed regarding the Oldsmobile Company's interest in this site. The Superintendent was instructed to advise them relative to our short-term plan.

The City of Lansing has been alerted to the need for another location for the Lincoln Center program.

Mrs. Gigson pointed out that the motion does not state that this is a temporary arrangement.

IT WAS MOVED BY Mr. Walsh and seconded by Mr. Rosa TO AMEND THE MOTION BY INCLUDING THE WORDS "DURING 1965-66" THUS MAKING THE MOTION READ AS FOLLOWS:

THAT THE LINCOLN SCHOOL BE DISCONTINUED AS A KINDERGARTEN THROUGH GRADE SIX SCHOOL COMMENCING SEPTEMBER, 1965, AND THAT PUPILS PRESENTLY ENROLLED BE TRANSFERRED TO OTHER

SCHOOLS WHERE SPACE IS AVAILABLE; THAT THE LINCOLN SCHOOL BE USED TO HOUSE SPECIAL EDUCATION PUPILS, AND THAT THE LINCOLN COMMUNITY CENTER CONTINUE TO USE THIS BUILDING AND SITE DURING 1965-66.

The amendment carried. No dissenting votes.

Further discussion was held. Mrs. Durham, a member of the audience, asked if the transporting of students by bus to other schools is the solution to the problem. It was stated that the Board does not see this as the ideal solution but rather as a pilot project to see if it is workable.

A vote was taken on the motion as amended.

Motion carried with Mr. Ebersole dissenting.

MOBILE UNIT LOCATIONS

MOBILE UNIT LOCATIONS—Historical Record 1962-1973

Compiled by: Dr. Edward L. Remick, Director of Research and Planning—July 10, 1973

School Dist. #	Serial #	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973
100	0570	Wainwright	Wainwright	Wainwright	Bingham	Bingham	Bingham	Bingham	Bingham	Bingham	Bingham	Verlinden	Verlinden
101	66-290	——	——	——	——	High	High	High	High	High	High	High	High
102	65-102				High	High	High	High	High	High	High	Cristo Rey	Cristo Rey
103	66-291	——	——	——	——	Holmes	Holmes	Holmes	Holmes	Holmes	Holmes	Holmes	Holmes
104	65-103	——	——	——	Cedar	Cedar	Cedar	Cedar	Holmes	Holmes	Holmes	Holmes	Cedar
105	0572	Wainwright	Wainwright	Wainwright	Wainwright	Wainwright	Wainwright	Wainwright	Holmes	Holmes	Holmes	Holmes	Hill
106	65-111	——	——	——	Everett	Everett	Everett	Everett	Everett	Everett	Everett	Everett	Hill
107	MU 108	Main	Main	Main	Main	Lincoln	Lincoln	Lincoln	Sexton	Sexton	Sexton	Sexton	Hill
108	0574	Cavanaugh	Cavanaugh	Cavanaugh	Bingham	Bingham	Bingham	Bingham	Wainwright	Wainwright	Sexton	Sexton	Hill
109	0575	Cavanaugh	Cavanaugh	Cavanaugh	Holmes	Holmes	Holmes	Holmes	Holmes	Holmes	Holmes	Attwood	Attwood
110	0573	Wainwright	Wainwright	Wainwright	Wainwright	Wainwright	Wainwright	Wainwright	Wainwright	Wainwright	Wainwright	Attwood	Attwood
111	66-292	——	——	——	——	North	North	North	North	North	North	North	North
112	MU-2	Main	Main	Main	Main	Lewton	Lewton	Lewton	Lewton	Northwestern	Northwestern	Northwestern	Northwestern
113	65-008B	——	——	——	Lewton	Lewton	Lewton	Lewton	Lewton	Northwestern	Northwestern	Northwestern	Maple Grove
114	MU-117	——	——	——	Rich	Rich	Rich	Rich	Sexton	Sexton	Sexton	Sexton	Maple Grove
115	65-109	——	——	——	Everett	Everett	Everett	Everett	Everett	Everett	Everett	Everett	Everett
116	65-110	——	——	——	Everett	Everett	Everett	Everett	Everett	Everett	Everett	Everett	Everett
117	65-112	——	——	——	Everett	Everett	Everett	Everett	Everett	Everett	Everett	Everett	Pattengill
118	66-056	——	——	——	——	——	Lincoln	Lincoln	Sexton	Sexton	Sexton	Sexton	Pattengill
119	65-113	——	——	——	Rich	Rich	Rich	Rich	Rich	Rich	Rich	Rich	Attwood
120	65-114	——	——	——	Rich	Rich	Rich	Rich	Rich	Rich	Rich	Rich	Rich
121	65-115	——	——	——	Rich	Rich	Rich	Rich	Rich	Rich	Rich	Rich	Rich
122	65-116	——	——	——	Rich	Rich	Rich	Rich	Rich	Rich	Rich	Rich	Rich
123	MU-118	——	——	——	Rich	Rich	Rich	Rich	Sexton	Sexton	Sexton	Sexton	Sexton
124	66-359	——	——	——	——	Hurd	Hurd	Hurd	Hurd	Hurd	Sexton	Sexton	Sexton

NEGRO ENROLLMENTS AT MAIN, MICHIGAN, LINCOLN AND KALAMAZOO

	63-64		64-65		65-66		66-67	
Main	428-442	96.8%	424-444	95.5%	319-371	86.0%	303-312	97.1%
Michigan	274-368	74.5%	276-373	74.0%	278-390	71.3%	286-362	79.0%
Lincoln	176-179	98.3%	——	——	——	——	——	——
Kalamazoo	461-578	79.8%	454-558	81.4%	442-552	80.1%	364-414	87.9%

PHASING OUT OF KALAMAZOO AND MICHIGAN AVENUE SCHOOLS RESOLUTION

* * * * * * *

IT WAS MOVED by Mrs. Canady and seconded by Mr. Ebersole THAT THE SCHEDULED PLAN FOR THE PHASING-OUT OF THE KALAMAZOO ELEMENTARY SCHOOL BY JUNE 30, 1970, AND THE MICHIGAN AVENUE ELEMENTARY SCHOOL BY JUNE 30, 1971, AS OUTLINED IN THE POSITION PAPER ENTILED—"FINAL PLANS FOR ELIMINATING DE FACTO SEGREGATION IN ELEMENTARY SCHOOLS," DATED SEPTEMBER 22, 1969, BE ADOPTED; THAT SPECIFIC PLANS BE DEVELOPED FOR FUTURE USE OF THE MICHIGAN AVENUE SCHOOL AS AN ELEMENTARY CENTER FOR ENRICHMENT AND OF THE KALAMAZOO SCHOOL AS A CENTER FOR CONTINUING EDUCATION INCLUDING PROGRAM DESCRIPTIONS, SPACE ALLOCATION, AND COST ESTIMATES OF ANY NECESSARY RENOVATIONS; AND THAT FIXED GEOGRAPHIC BOUNDARIES BE ESTABLISHED ASSIGNING PUPILS IN THESE TWO ATTENDANCE AREAS TO SPECIFIC RECEIVING SCHOOLS.

Mrs. Canady explained that with the Academic Interest Center in the West Junior Building, the Enrichment Center in the Michigan Avenue School and the Continuing Education Center in the Kalamazoo School, these buildings would be integrated facilities open to all students in Lansing, that these buildings will house schools of good standing to which students will be delighted to be admitted, schools which will be a credit to the community and to the city. She felt that this ought to be explained to the people of the community as a forward step on the part of the Lansing School District.

Mr. Rosa asked if the renovations were planned so that should there be a shortage of money the buildings could still be used for the express purposes listed.

Dr. Partington explained that the money for renovations at the Kalamazoo and Michigan Avenue buildings was not currently budgeted, but that if there were not enough money to renovate the buildings when the time came, they could be used without major renovations for the purposes listed.

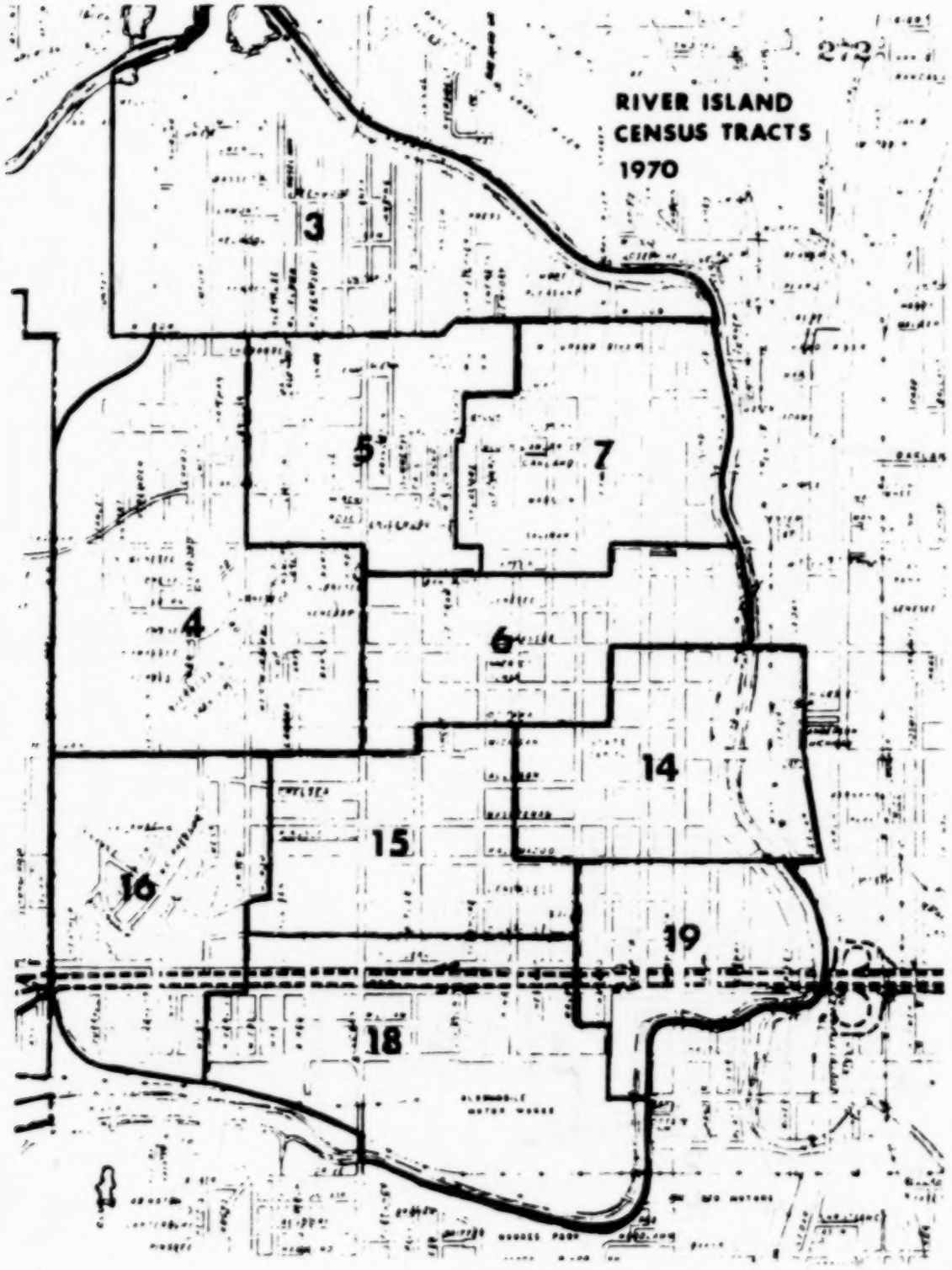
Motion carried. No dissenting votes.

RECORD OF SCHOOL SITE SIZES, BUILDING CONSTRUCTION, ADDITION AND MODERNIZATION

School	Site Size	Site Acquired	Building— Original	Additions	Modernization
Allen	2.20	1909	1913	1926	1969
Attwood	5.80	1962	1965	1969	
Averill	7.81	1959	1964	1967	
Barnes	2.25	1919	1920	1958	1970
Bingham	1.22	1891-1969	1955		
Cavanaugh	9.34	1956	1957		
Cedar	0.80	1859	1918	1932	1968
Cumberland	5.34	1957	1957		
Elmhurst	10.00	1946	1950	1951, 1961, 1969	1971
Everett Elem.	7.10	1920	1923		
Fairview	10.00	1953	1954		
Forest Road	2.00	1940	1937		
Forest View	10.00	1956	1957	1964	
Foster	2.00	1915	1918		1969
Franks	6.89	1959	1960		1969
Genesee	2.16	1909	1912	1962	
Gier Park	6.00	1953	1952	1957, 1969	
Grand River	2.92	1910	1960		
Gunnisonville	7.50	1954	1954		1968
High	3.37	1917	1924		1969

School	Site Size	Site Acquired	Building—Original	Additions	Modernization
Holmes	1.65	1922	1923		
Horsebrook	10.73	1875	1952	1956, 1961	
Kendon	9.52	1951	1958	1961	
Lewton	8.00	1955	1956	1966, 1969	
Lyons	5.00	1951	1951		
Main	2.38	1925	1929	1953	1970
Maple Grove	10.13	1923	1949		1969
Maple Hill	1.64	1945	1951	1953, 1960	
Maplewood	2.50	1917	1918	1951	1968
Michigan	1.34	1891	1915		1971
Moores Park	1.42	1906	1956		
Mount Hope	4.37	1925	1948	1953	
North	10.61	1918	1946		
Northwestern	6.02	1938	1939	1953, 1955	1970
Oak Park	0.87	1892	1916		1969
Pleasant Grove	4.5162	1958	1929	1949	1970
Pleasant View	11.60	1954	1954	1955, 56, 63, 68	
Post Oak	6.48	1964	1965	1967	
Reo	7.70	1960	1964		
Sheridan Road	9.10	1864	1919	1948	

School	Site Size	Site Acquired	Building—Original	Additions	Modernization
Valley Farms	12.45	1949	1947	1954, 1957	
Verlinden	3.40	1929	1930	1953	1970
Wainwright	6.42	1957	1960	1965	
Walnut	2.25	1890	1924	1935	
Wexford	6.86	1960	1967		
Willow	5.87	1914	1950	1953, 1961	
Woodcreek	4.84	1966	1967	1970	
Walter French	7.40	1924	1925	1951	
Gardner	30.00	1967	1968		
C. W. Otto	20.52	1925	1937-1954	1956, 1967	
Pattengill	13.00	1920	1920		
Dwight Rich	21.09	1957	1963	1966, 1967	
Eastern	13.00	1928	1928	1937, 1961, 1968	
Everett	57.06	1953	1958	1960	
Hill	50.75	1962	1969		
Sexton	35.00	1938	1942		


RIVER ISLAND
CENSUS TRACTS
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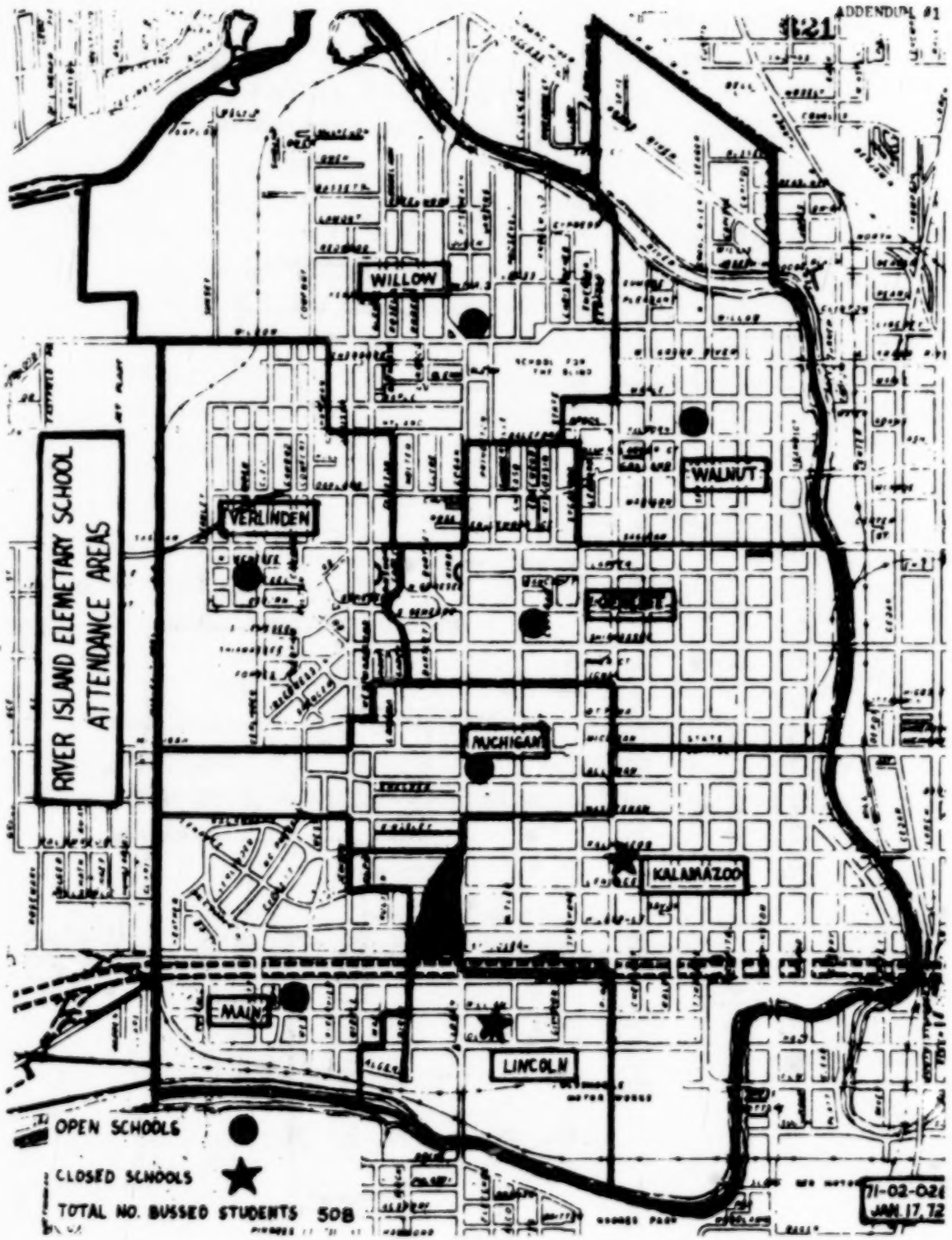
18


ADDENDUM #1
121
WILLOW
WALNUT
VERLINDEN
MICHIGAN
KALAMAZOO
MAIN
LINCOLN
RIVER ISLAND ELEMETARY SCHOOL
ATTENDANCE AREAS
OPEN SCHOOLS
CLOSED SCHOOLS
TOTAL NO. BUSSED STUDENTS 508
71-02-02
JAN. 17, 72

TOTAL POPULATION BY RACE

The table below depicts the changes in the racial composition of the River Island population.

TOTAL POPULATION BY RACE (PERCENTAGE DISTRIBUTION)*

		#3	#4	#5	#6	#7	#14	#15	#16	#18	#19	Average
1950	B	0.6	0.1	4.8	0.2	0.3	0.3	7.4	0.0	46.0	0.7	8.2
	W	99.4	99.1	95.2	99.8	99.7	99.7	92.6	100.0	54.0	99.3	91.8
1960	B	1.0	0.5	9.5	0.4	1.0	5.0	41.0	32.5	80.6	5.6	20.1
	W	99.0	99.5	90.5	99.6	99.0	95.0	59.0	67.5	19.4	94.4	79.9
1970	B	8.5	15.4	26.6	8.8	3.7	6.0	79.1	73.0	97.6	9.2	33.2
	W	91.5	84.4	73.4	91.2	96.3	94.0	20.9	27.0	2.4	90.8	66.8

* U.S. Census

In 1950, over 80% of the River Island's black population lived in C.T. #18. In all other tracts, black residents were a very small portion of the population. During the 1950's, there was a massive migration of black people from the south into northern industrial cities. This migration was primarily young, single adults. Lansing was one of many cities to which these young adults migrated during those years. The increase of 3,500 black residents during the 1950's corresponded with a decrease of 5,500 white residents during this period. The majority of the River Island area remained segregated by race, although the black residential area spread out to C.T. #15 and 16. Black residents now constituted 20% of the total River Island population.

During the 1960's, the number of black residents continued to increase although less rapidly than in the 1950's. The exodus of white people accelerated as their number dropped one-third to a total of 16,500 residents.

All census tracts except C.T. #7 and #14 had measurably increased numbers of black residents and decreased numbers of white residents. By 1970, most of River Island was residentially desegregated, although segregated areas, both black and white remained.

VERLINDEN NON-RESIDENT PUPILS

School Year	Number		Percent	
	Caucasian	Negro	Caucasian	Negro
1966-67	13	16	45	55
1967-68	7	18	28	72
1968-69	11	33	25	75
1969-70	6	18	25	75
1970-71	4	19	17	83
1971-72	4	13	24	76
1972-73	3	8	27	73

No. 77-600

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

LANSING BOARD OF EDUCATION, a Body Corporate; and Members of the LANSING BOARD OF EDUCATION; viz., VERNON D. EBERSOLE, CLARE D. HARRINGTON, MICHAEL F. WALSH, RAY A. HANNULA, JOAN HESS, J. C. WILLIAMS, BRUCE ANGELL, JOSEPH E. HOBRLA and MAX D. SHUNK,

Petitioners,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Lansing Branch; CYNTHIA TAYLOR, JUDITH TAYLOR and ANDREA TAYLOR, by Their Father and Next Friend, JAMES R. TAYLOR; MELINDA LEA HEDLEY, CHRISTINE MICHELE HEDLEY, DOUGLAS JOHN HEDLEY and DANIEL JOSEPH HEDLEY, by Their Mother, and Next Friend, JOAN L. HEDLEY; PETER MILLER and ELIZABETH MILLER, by Their Father and Next Friend, CHARLES MILLER; FRANK J. PENNONI and JAMES PENNONI, by Their Mother and Next Friend, KATHLEEN PENNONI; and DAVID KRON and LISA KRON, by Their Father and Next Friend, WALTER V. KRON,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit

JOHN W. DAVIS
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INDEX

CITATIONS

STATUTE CITED

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OPINIONS BELOW

The opinion of the Court of Appeals for the Sixth Circuit affirming the District Court's finding of *de jure* segregation and the District Court's granting of a permanent injunction is reported at 559 F.2d 1042 (6th Cir. 1977).

The District Court's opinion on liability is reported at 429 F. Supp. 583 (W.D. Mich. 1976).

Unreported decisions include the Preliminary Injunction issued by the District Court granted August 10, 1973 (Pet. App. 1-40), aff'd 485 F.2d 569 (6th Cir. 1973), and the Court of Appeals opinion denying application for stay (Pet. App. 41-43).

JURISDICTION

The judgment of the Court of Appeals was rendered on July 26, 1977. The Petition for a Writ of Certiorari was filed on October 19, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the Courts Below, Following a Finding of *De Jure* Segregation in the Lansing School System, Correctly Adopted and Applied the Legal Standards Relating to the School Board's Affirmative Duty to Correct Said Segregated Condition.

2. Whether the Court of Appeals Erred in Affirming the District Court's Employment of "the Natural and Foreseeable Consequences" Test as an Indicium of Segregative Intent.

3. Whether the Court of Appeals Erred When It Found the Defendant's Discriminatory Actions and Omissions Contributed to and Resulted in a Condition of *De Jure* Segregation within the Lansing School District.

4. Whether the Court of Appeals Erred in Affirming the Desegregation Plan Adopted by the District Court.

5. Whether the Courts Below Erred in Finding the Effects of the Segregative Act of the Lansing School Board Warranted Judicial Intervention.

STATEMENT OF THE CASE

This is a school desegregation action against the Lansing Board of Education of Lansing, Michigan. In almost every particular it parallels the case of *Oliver* v. *Kalamazoo Board of Education,* 368 F. Supp. 143 (W.D. Mich. 1973) aff'd 508 F.2d 178 (6th Cir. 1974) cert. denied, 421 U.S. 963 (1975).

On December 19, 1975 the District Court held that the Lansing school system was segregated *de jure.* This holding was firmly based upon extensive findings concerning the school board's actions with respect to assignment of faculty (Pet. App. 84-88), gerrymandering of attendance zone boundaries (Pet. App. 66-67), discriminatory transfer policies (Pet. App. 68-78), deployment of mobile classrooms (Pet. App. 76-78), physical conditions and facilities (Pet. App. 78-84), construction and location of new schools (Pet. App. 120-123), one-way busing (Pet. App. 115-120), and rescission of an existing and operating "cluster plan" (Pet. App. 112-115). The Court of Appeals concluded that the District Court did not commit error in its finding of purposeful *de jure* segregation. Further, they concluded that the "requisite segregative intent or purpose for a finding of constitutional violation is readily inferable. . . ." from the above mentioned acts (Pet. App. 184).

On the question of relief, the District Court embodied in its decree a desegregation plan devised by the administration of the Lansing school system. Said plan was a slightly modified version of the one originally devised by the recalled school board and fully implemented by the school administration. (Said original plan having been rescinded by the school board midway through the school year and reinstated pursuant to the District Court's Preliminary Injunction). The school system has been operating on a fully desegregated basis pursuant to these plans for five (5) years.

ARGUMENT

The decision of the courts below are correct and further review is not warranted.

1. The Petitioners assert that the courts below erred in holding that there was an affirmative obligation to desegregate absent constitutional violations. Such was not the holding of the District Court or the Court of Appeals.

This very point was specifically addressed by the Court of Appeals wherein it held that,

> ". . . Appellees claim that the District Court erred in holding that the school board had an affirmative duty to desegregate the elementary schools. . . .
>
> The Constitution imposes no duty on school officials to correct segregative conditions resulting from factors over which they have no control, such as residential patterns, and the failure to anticipate the effect on racial composition of the schools of adherence to a neighborhood school policy does not signify that a school board has created a dual system, absent a showing of segregative intent." (Pet. App. 169-170)

The Court of Appeals held that the State assumes an affirmative duty only when ". . . school authorities have carried out a systematic program of segregation affecting a substantial portion of students, schools, teachers, and facilities within the school system . . .", and specifically relied upon the mandate of *Keyes* v. *School District No. 1,* 413 U.S. 189 at 201 (1973).

The District Court found numerous constitutional violations which impelled such an affirmative duty. The Court of Appeals noted and affirmed these constitutional violations, specifically the policies of the school board relating

not only to attendance boundaries, but medical transfers, mobile units, maintenance of physical facilities, one way busing of black children, faculty hiring and assignments, construction and use of new elementary schools, and rescission of the cluster plan.

The standard adopted and applied by the courts below, reflect firm adherence to the decisions of this Court. See *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971); *Keyes* v. *School District No. 1,* 413 U.S. 189 (1973), and *Oliver* v. *Kalamazoo Board of Education,* 368 F. Supp. 143 (W.D. Mich. 1973) aff'd 508 F.2d 178 (6th Cir. 1974) cert. denied, 421 U.S. 963 (1975).

2. The courts below correctly adopted and carefully applied the principles governing "intent" as set forth by this Court in *Keyes* v. *School District No. 1,* 413 U.S. 189 (1973); *United States* v. *Texas Education Agency,* 532 F.2d 380 (5th Cir. 1976) vacated and remanded 429 U.S. 990 (1976); *Washington, Mayor of Washington D.C.* v. *Davis,* 426 U.S. 229 (1976), and *Dayton Board of Education* v. *Brinkman,* 97 S. Ct. 2766 (1977). Petitioners apparently assert that there has been a significant misapplication of the *Keyes* requirement of segregative intent and that courts may no longer take cognizance of the "natural and foreseeable consequences" of a school board's actions and omissions when seeking to determine "intent". Respondents disagree. Unlike the situation in *United States* v. *Texas Education Agency,* 532 F.2d 380 (5th Cir. 1976), vacated and remanded, 429 U.S. 990 (1976), [which was essentially a remedy case], wherein the Court of Appeals gave controlling effect to the simple use of neighborhood schools and applied the tort liability principles, without looking for specific intent, the courts below carefully and meticulously adhered to the specific intent requirement of *Keyes* v. *School District No. 1,* 413 U.S. 189 (1973), and *Washington, Mayor of Washington D.C.* v. *Davis,* 426 U.S. 229 (1976).

The courts below recognizing that the specific intent requirement had to be met, stated

> "A finding of *de jure* segregation requires a showing of three elements: (1) action or inaction by public officials (2) with a segregative purpose (3) which actually results in increase or continued segregation." (Pet. App. 54, 165)

The Court of Appeals then concluded that the requisite segregative intent or purpose for a finding of constitutional violation is readily inferable, not from the simple use of neighborhood schools or simple racial imbalance but,

> ". . . from the gerrymandering of attendance zone boundaries, the granting of special transfers from minority to majority schools, the use of mobile units under circumstances which enhance the racial identifiability of schools, the one-way busing of minority students, the discriminatory assignment of minority faculty and administrators, the relative inferiority of facilities at minority schools, the rescission of the cluster-school desegregation plan, and the choice of location of the new Vivian Riddle School coupled with the decision to operate it as a neighborhood school so that it is certain to open as a segregated facility. . . ." (Pet. App. 184)

This case is also distinguishable from *Dayton Board of Education* v. *Brinkman,* 97 S. Ct. 2766 (1977) likewise, and in *Washington, Mayor of Washington D.C.* v. *Davis,* 426 U.S. 229 (1976), wherein the lower courts had relied upon simple racial imbalance and failed to demand that discriminatory intent so religiously demanded and found herein.

We do not deny that the courts below did consider the natural, probable, and foreseeable consequences of the school board's acts and omissions, singularly and in their totality, in ascertaining intent. At no time, however, has this Court taken the position that the various discrimina-

tory acts and the consequences of such acts of a public body are irrelevant in making such a determination, the cases cited above notwithstanding. As Justice Stevens stated in his concurring opinion in *Dayton Board of Education* v. *Brinkman,* 97 S. Ct. 2766 (1977)

> "the relevant finding of intent in a case of this kind necessarily depends primarily on objective evidence concerning the effect of the Board's actions rather than the subjective motivation on one or more members of the Board; see Washington v. Davis, 426 U.S. 229, 253-254."

3. The courts below took full cognizance of the effect and results of the various discriminatory acts of the Lansing Board of Education. Contrary to the assertions of Petitioners, the courts below carefully followed the mandate of *Keyes* v. *School District No. 1,* 413 U.S. 189 (1973) concerning increased or continued segregative "results" noting that the (1) boundary line gerrymandering "had the foreseeable effect of increasing the racial identifiability of Michigan Avenue School" (Pet. App. 171), and accelerating segregation at "white Verlinden School" (Pet. App. 172); (2) transfer policy "was abused in a way which contributed to the segregative conditions in these [Main, Michigan and Verlinden] schools" (Pet. App. 174); (3) mobile unit policy had an effect on the composition of Main, Verlinden, Walnut and Barnes Schools, ". . . earmarking (them) according to their racial composition" (Pet. App. 174-175). The discriminatory results or contemplated results were also noted with respect to the Board rescission (Pet. App. 180) and the site selection on the Vivian Riddle School (Pet. App. 182).

These constitutional violations then noted in conjunction with the enrollment statistics (Pet. App. 180) available at trial convincingly demonstrate that the courts below did

not deviate from this Court's mandate concerning "segregative results".

4. The remedy imposed by the District Court is a modest one involving only grades one (1) through six (6), at a limited number of schools. It was designed by the Superintendent and the administrative staff of the Lansing School District. Cross-district busing is not involved. It was designed and implemented to correct the results of the Board's discriminatory acts and the injunction prohibiting its rescission was properly held to comply with the guidelines in *Dayton Board of Education* v. *Brinkman,* 97 S. Ct. 2766 (1977) (Pet. App. 184).

5. In light of the pervasiveness of the Board's numerous constitutional violations, discussed heretofore, and the Board's continued insistence to resegregate the Lansing School system through rescission (Pet. App. 181) and the construction and maintenance of the new (not completed at the time of trial) segregated elementary school facility (Pet. App. 182), judicial intervention was not only warranted, but mandated.

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit should be denied.

Respectfully submitted,

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